

REGION V

MIDWESTERN STATES

REGULATORY FAIRNESS BOARD HEARING

ROCKFORD, ILLINOIS

SEPTEMBER 11, 2000

CHAIR ABLAN: ... 1996 White House Conference. Most of the people on the panel were White House Conference delegates. We're all small business owners and we care about your opinions and what you have to say. We've been working very diligently the last couple of years to have Congress be responsive to our annual report. We put out an annual report to Congress based on testimonies and make recommendations to Congress.

We have a number of agencies here today. I hope that they will respond to some of the recommendations we made last year and respond to some of the cases that we have before them. John is vice chair from Ohio.

MR. HEXTER: A delegate to the 1986 and to the 1995 White Conference on Small Business from Cleveland, Ohio. And we have some smaller enterprises in Cleveland. You don't want to hear from us we want to hear from you.

MR. RIBBLE: My name is Steve Ribble. I'm a roofing contractor.

MR. MAGETT: Don Magett from Kalamazoo, Michigan. I was glad to be at the White House Small Business Conference in 1995. I own a small security company in Kalamazoo, Michigan.

CONGRESSMAN MANZULLO: I'm a member of the House Small Business Committee. I would like to go around the room and find out who's here.

(INTRODUCTIONS FROM AUDIENCE)

MALE VOICE: The new Commissioner for the IRS is Charles Rosad. He's been here about two years now. And I have had the pleasure of working with him. Come to find out the IRS, believe it or not, is one of the most responsive Federal agencies when it comes to inquiries from Members of Congress. Charles Rosad is not a tax attorney sort of guy. He is a systems person.

Founded his own software company. And then sold it. And I've talked to him on several occasions. He's been extremely responsive. When you have a hundred and six thousand employees and a budget of eight point five billion dollars it's very hard to stay on top of things. But all we have to do is call something to his attention and he's helped us out on quite a few occasions.

MR. BORCH: My name is Sil Borch and I'm a reporter for with the Rockford Register Star.

MR. FRIEND: I'm Bob Friend with the Mine Safety and Health Administration. And I'm from the national office in Arlington, Virginia.

MR. QUINTANA: Good morning, I'm Felix Quintana. I'm the District Manager for Mine Safety and Health Administration out of Duluth, Minnesota.

MS. DAPKINS: Hi, I'm Catherine Dapkins from the United States

Custom Service, Office of the Trade Ombudsman.

Mr. BRUNO: Hello. Dick Bruno with U.S. Customs in the Port of Chicago. I'm the Trade Enforcement Coordinator for this area.

MR. MEAD: Good morning, I'm James Mead with U.S. Department of Commerce. Thought I'd show up and maybe help some of the companies with export matters.

MR. STEVENS: Good morning, I'm Ron Stevens and I'm Assistant Area Director with OSHA, Occupational Safety and Health.

MS. STILLY: I'm Kim Stilly, I'm the Area Director out of Madison, Wisconsin for Occupational Safety and Health.

MR. WYNN: Good morning, I'm Pat Wynn, Vice President of Human Resources for Ingersol International located here in Rockford.

MR. DENZLER: I'm Mark Denzler, I'm Director of Government Affairs for the Illinois Manufacturers Association.

MS. CHOATE: I'm Paula Choate and I'm with the U.S. Equal Employment Opportunity Commission, or EEOC. I'm the Director of Field Coordination Programs. We handle all of the field offices of the EEOC around the country.

MR. FALCONER: Good morning, I'm Lloyd Falconer, Secretary-Treasurer of Seward Screw Products.

MS. PHILLIPS: Good morning, I'm Kimberly Phillips, I'm with the

Food and Drug Administration, Chicago District Office, Public Affairs.

MS. WALLACE: Good morning, my name is Renee Wallace, I'm a manager in the Taxpayer Advocate Office under the Internal Revenue Service.

MR. JONES: Good morning, I'm Kevin Jones from the Department of Justice in Washington, D.C. in the Office of Policy Development with the Regulatory Policy Office for the Department. Probably our regulatory programs are best known to small business with respect to the employer employment verification program that the Immigration and Naturalization Service runs.

We also have a few specialized regulatory programs including DEA subversion control program for controlled substances, unlisted chemicals, and a few other programs as well. I have a written statement that describes some of our programs. I think there's probably more that the Justice Department does that has at least a limited impact on specialized areas for small business and many people within.

MR. MOROWSKY: Weston Morowsky from the U.S. Environmental Protection Agency, Region V.

MR. DEABLER: I'm Ron Deabler. I'm with the Independent Business Association of Wisconsin. I'm a small business owner and I'm the Federal Programs Coordinator for the Independent Business

Association of Wisconsin.

MR. HANSEN: My name is Mike Hansen. I'm a small business owner from Wisconsin. I'm in the printing and flexible packaging industry in Marrow, Wisconsin. And also in Rhinelander, Wisconsin. And this year I'm the Board President of the Independent Business Association of Wisconsin.

MS. CHRISTIANSON: Good morning, I'm Pam Christianson. I'm the Small Business Ombudsman for the Wisconsin Department of Commerce.

MS. FULGINZI: I'm Annette Fulginzi and I'm with the Illinois Department of Commerce and Community Affairs. And specifically I'm with the Illinois Small Business Environmental Assistance Program so we help people with their regulatory requirements under the Clean Air Act.

MS. KAYAT: Good morning, I'm Katy Kayat with the Illinois Department of Commerce and Community Affairs Office of Regulatory Flexibility.

MR. PETRILLI: Good morning, I'm Mark Petrilli. I'm manager of the small business office at the Illinois Department of Commerce and Community Affairs. And also the State Director for the Illinois Small Business Development Center.

MS. DIBENEDETTO: Good morning, I'm Shirley DiBenedetto. I'm the Director for the Small Business Development Center here at Rock

Valley. And welcome to all of you.

MS. WHITFIELD: Good morning, my name is Sue Whitfield. I'm the Director of the Small Business Development Center at McHenry County College in Crystal Lake.

MR. MCGWIRE: Joe McGwire, Recessford Construction Company in Iowa.

MR. ECHBERG: Dean Echberg.

CONGRESSMAN MANZULLO: Just by way of background, regulations cost the economy, that's sort of a difficult word to use, but at least in terms of dollars and cents, approximately seven hundred billion dollars annually. It's ordinarily about seven thousand dollars for an average family of four. An example of the regulatory initiatives is on April 24, 2000 the Federal agencies issued their semi-annual regulatory agenda.

This is just the agenda. The agenda's which identify agency rule making intentions fill three volumes or fourteen hundred and seventy-five pages of the Federal Register. I'm sure you all read that prior to coming here. I know that Falconer did. Businesses and individuals will eventually be obliged to comply with these new rule makings in addition to the other existing Federal, State and Local regulations.

Regulations have a disproportionate impact on small businesses.

Let me explain. Small companies spend up to eighty percent or more per employee in complying with Federal regulations than big companies spend, according to the 1995 Site Information by the Office of Advocacy of the SBA. That's obviously because the larger companies could afford a full-time compliance officer.

Which makes it a lot cheaper and a lot more efficient than smaller companies having to try to figure out on their own. And that's one of the reasons we're here today. Small companies spend a total of two hundred and sixty-five billion dollars annually to comply with Federal regulations while large companies spend a hundred and thirty billion dollars.

This past session the House has passed several reforms, or had several proposals. We passed HR1074 in July of 1999 that would require an annual review of all existing current regulations. That died in the Senate. S746 passed the Senate Governmental Affairs Committee in May of last year, that would require cost benefit analysis of proposed regulations.

HR350 passed the House last February. It required public disclosure of any Federal mandate on the private sector proposed legislation. The Truth in Regulating Act, HR4924, passed the House this past July. That would establish a three year product ordering the General Accounting Office to evaluate for Congress the impact on small business of economic significant rules.

HR1882 passed the House Small Business Committee a year ago in May to clarify the panel process. It adds the IRS to the list of covered agencies. This is pretty important. Because when the IRS comes down with proposed regulations it has to get it through the SBREFA process so as to have an analysis of the impact upon small businesses.

Reform of OSHA. The approach that OSHA has been taking that has come under scrutiny; in fact the Director of OSHA, we invited and he came out to our Congressional District and visited a local facility. We wanted to show him what we were doing ourselves in the area of ergonomics in that at least in our humble opinions there's no need for additional legislation and regulations on that.

So we've been pretty busy with a whole package of bills trying to streamline the process. The biggest problem that the small business people have, and I come from a background of my folks being in the grocery and restaurant business since back in 1948 and the family business continues to this date, is the fact that small businesses have no idea of what rules apply to them. What regulations apply to them. What laws apply to them.

And oftentimes the first time they find out that that law exists they're in violation of it. And they get hit with a fine. The State of Illinois has been trying to; actually had a pilot program with OSHA to help small business people come into compliance

without fining them. So they're a lot of bright spots out there. But with over ten thousand Federal programs and a nearly three trillion dollar Federal budget one can just imagine the number of agencies that are out there involved in regulating small businesses.

Lyle, you just came in from Minnesota?

MR. CLEMENSON: My name is Lyle Clemenson. I'm a small businessman from Broken Heart, Minnesota. What I do is I'm an inventor engineer, and what I do is make products for maintenance departments of City schools, hospitals, governmental agencies and private industry across the United States. And we are a small company. We have twenty employees. Been in business since 1978. And was asked to be a part of this panel and am honored to do so. Thank you.

CONGRESSMAN MANZULLO: Appreciate it. Now everybody here is a small businessperson, right? The people that we set up to hear the complaints of the small business people are small business people themselves. But it's obvious, by way of introduction, that there's a good array of people in the audience that represent people that are associated with the Government. We appreciate all of you coming here. OSHA here. IRS, EPA, EEOC. Department of Labor. We can just go; Mines and Safety, et cetera.

So chances are when you give your testimony, not only will the

people involved in private sector be taking the testimony, but then you also make your report back to the SBA and to the relevant agencies. And to the United States Congress. So what we're going to do here is we have about ten people lined up to testify.

Pat Wynn, you're up first. And you want to come here. Somebody needs to be the timekeeper here.

CHAIR ABLAN: We'll keep time up here.

CONGRESSMAN MANZULLO: Okay, what's the time allotment on it.

CHAIR ABLAN: In terms of the testifiers they've got five minutes.

CONGRESSMAN MANZULLO: All right, you've got five minutes.

CHAIR ABLAN: I want to thank all the agencies that came. It's really important in terms of small business that you listen to the problems that small business people have so when you go within those small businesses you can work together to find out what's the best way to solve the problems and not find them.

I also would like to ask all the Government people that are testifying; I know you were told you could have twenty minutes. But because of the tardiness of the whole thing starting we'd ask you to reduce it to ten. And leave time for Q&A. And if you want to just submit your testimony and be open for questions that's okay too. Thank you.

MR. WYNN: Ingersol International is a company with a very long and a very proud history in Rockford. Our people produce some of the finest machine tools and cutting tools in the world. For more than a century, a hundred and thirteen years. But for a hundred and eleven of those years we've been headquartered in Rockford. We've really been the model that the rest of the world has used. And we're a place that people still come to where to learn about manufacturing.

We have survived and we have actually led in a business which by its nature is both cyclical and volatile. We have prospered, we have suffered in all different forms with a group of dedicated employees who are really proud. For Rockford Ingersol is not a small business. But when we look at the rest of the world we know that Ingersol shares far more of the concerns small businesses than it does with those that might be traded on the New York Stock Exchange or that might be listed in the Fortune 500.

Ingersol is truly reflective of its home town in Rockford. We work hard, we treat each other fairly, we expect a fair return for our services and labors. And we want to continue to grow and to change as the world's markets grow and change. What Ingersol hopes to achieve by speaking at this meeting is this.

The Government must be flexible. It must allow for change and flexibility in markets. And it must actively encourage the efforts of small businesses to compete in a world marketplace.

This panel, this Congressman, this agency, this Government must, by their individual assistance and lack of broad interference, encourage manufacturers to become global in their outlook and in their marketing.

Many small businesses are accustomed to being self-sufficient. Indeed the spirit of entrepreneurship springs to a spirit of self-confidence and independence. They see a job or opportunity and they seize upon it. They see a market and develop. They see a Government regulation and comply with it. Knowing it will interfere with the job and delay the marketing.

Therefore the Office of Ombudsman must be strong. The role of the SBA must be one that encourages business and helps small businesses thrive as global businesses. For a company such as Ingersol, with primary operations in the United States and Germany, it means encouraging the exchange of technicians and engineers and machinists. It means refocusing the Immigration and Naturalization Service into an agency that is concerned, and not only with its plenary police problems, but also with the discretion and the ability to help companies with established products and work forces to freely exchange workers. It means encouraging the business development of and in other countries so they continue to recognize America's workers, products and technology as the very best in the world.

To accomplish this will require an INS with business savvy and not

merely law enforcement experience. Our company, not unlike many others in this area, want to expand their markets. We recognize, as do others, that the best way to have our products trusted in new markets is to first have our people trusted. But this requires a reciprocal perception of trust.

If the legitimate business professionals have to jump through bureaucratic hoops because they want to transfer to another U.S. location, or accept a promotion, or take different assignments, still within the same company, from that which originally brought them to this country distrust results. Development is curtailed and delay is compounded. Recruiting the best and the brightest suffers in the process.

We have been an active manufacturer and continue to be an active employer with almost two thousand employees now for over a century. We like to think we've really just begun our progress. For this agency, charged by Congress to develop and nurture small businesses, to ignore the global market or to the abilities of small businesses to participate in them would be a mistake of the first magnitude.

We trust these sessions are not merely a sedative designed to placate business into thinking that there's promise in the offing. And we urge you, as you come here, to know that you've raised expectations by being here. And we hope that you don't forget us, your customer, when you leave. We need you to deliver on your

warranty that we read into this and similar meetings. And we are asking you to help meet our commitments while meeting yours.

Thank you for your time.

CHAIR ABLAN: Thank you. Great ending, we like that. We're trying very hard to attain that goal. We have questions.

MALE VOICE: You made a statement in your testimony that said we need a; I'm trying to quote you as closely as I can. We need a business savvy INS, not just a policing one. I'd like you to just expound on that a little bit.

MR. WYNN: Certainly. The issue really for companies such as ours who have operations in two major countries, here and Germany, is one that if we had somebody who is an employee of Ingersol but may be a German native, without going back basically and redoing a lot of paper work and requalifications for instance a person on a, a B1B visa has to stay in the same job description. Otherwise you risk being in violation.

And so what we're saying is that somebody who is in fact a qualified employee but might be a national of one country, if they are staying within that company ought to be able to accept a promotion or a transfer. We have facility, a smaller facility in Michigan. And it would be difficult, if not impossible, but difficult at the least to have people transferring between Rockford and Michigan.

We need to be able to do it quicker. If we have a business need we try and respond to it quickly. It's not that it can't be done. It needs to be done quickly at times for business purposes. What we're asking, what we're suggesting is that it also makes sense to have not just people with the least experience and a police mentality, but also a business savvy, that they understand. To be responsive in this marketplace takes quick decisions and needs to have some discretion on the part of the agency.

MALE VOICE: If you made application for an employee to either transfer or change job position within your company how long would that take to get the paper work through to get that approved?

MR. WYNN: The minimum that we've experienced is about twelve weeks. And that also would involve; you would have to establish a new residence in the place where he was going to; the process is open for too much time. And I think what we want to do is have an honor system where people can transfer, promote, do whatever within a company. And if they're an international company they ought to be able to do it across the borders.

CHAIR ABLAN: Any more questions? Thank you very much, Pat. Perry? Perry and I were White House Conference delegates together from the State of Illinois.

MR. MOY: Good morning everybody. Thank you all for this forum and thank you Congressman Don Manzullo for hosting this event. My

name is Perry Moy. I've been a restaurateur for thirty-five years. My mom and I started a restaurant thirty-five years ago and we're a business that employs under thirty people. And we have a gross sales of under a million dollars.

While all sectors of the economy have benefited from an extended period of economic growth one significant downside is being felt. The shortage of lesser skilled and unskilled essential workers with the unemployment rates in some areas approaching zero. After a vigorous school to work and welfare to work and other improvement efforts in this great economy we seem not to have the workers that we need.

We believe the current legal process; and this is dovetailing on the Ingersol comment, we believe that the current legal immigration process is seriously flawed. It is virtually impossible for small business owners to navigate. While we are working on the national level with the coalition of business groups to change the system I would like to highlight one particular kind of visa that our industry is trying to use as a way to help this labor shortage. The H2B visa.

The restaurant industry is the largest employer of seasonal workers behind the construction industry. To fulfill some of their other seasonal hiring demands some restaurant owners and operators use the H2B visa. Despite the high need for such visas more than half of these visas available each year go unused

because of the paper work and the difficulty of trying to navigate through this process.

For example, while many of our members need to fill permanent jobs the H2B category can only be used when the employer's need is temporary. Meaning seasonal, intermittent or peak loading need or one time occurrence. By eliminating the requirement of that position be temporary small business owners and others can use the category to fill the short term labor shortage needs into permanent positions.

Another problem is that the H2B visa cannot be filed prior to need. Current regulations require that the position be available at the time the recruit vendor is conducting. Meaning that employers must wait several weeks or months before an opening can be filled. Again, navigating through this paper work and the time constraints on it.

The H2B visa also requires a time consuming and onerous labor certification process. You've got to verify, check and verify, check again. By requiring additional postponing recruitment the U.S. Department of Labor effectively doubles the cost and time to employers for advertising for an open position. Usually the same result. No U.S. worker can be found.

Another aspect of immigration burdens to small business owners is the employer sanction process. Designed to slow the high level of

illegal immigration into the country the Federal Government in 1986 began requiring that employers verify the work eligibility of every new hire. The Form I9 process has not only failed to slow or stop illegal immigration, it has placed employers in a no win situation.

Employers must now discriminate against new hires but can be fined and be subject to criminal penalties. Again, a small businessman like myself, we have to at that time of verification looking at the green card numbers and looking at the process itself, we have to make a call to find out if this person is illegal.

We followed all the methods and we found out that if the green card is illegal or falsified we face penalties and we can actually have our restaurants closed because of that. So I think there has to be some type of discussion and a change of the rules on that. The INS was directed to update the Form I9 process and the number of documents that may be used in the process.

Employers are still waiting for the changes. In the meantime the confusion continues. In fact, the AFL-CIO has recently called for its repeal. Again, in times like this that's what we're facing. Not a labor shortage but a labor crisis. As restaurateurs and small business people we look still to high school help and to young people help. But we're restricted there because of our lifestyle changes, our parenting changes and things like that.

Minimum wage has cut into that too. We feel that the H2B visa is something to be looked at. Thank you.

CHAIR ABLAN: Thanks, Perry. What would you suggest in terms of fixing these H2Bs?

MR. MOY: Opening them up. Meaning that cut the paper work out. My friend is the Food and Beverage Director of Disney World; and guess what their food and beverage sales are annually per month at Disney World.

CHAIR ABLAN: I can't imagine.

MR. MOY: It's a billion dollars. Can you imagine that? From a billion to my restaurant, there's a big gap there. What they do is at Disney World and at Maginaw Island, the Dells, they contract with countries to bring over temporary; and these are H2B visas, to come here to fill the work shortage. They couldn't open the Dells or Disney World without these visas.

And what happens here is that young people then have to meet requirements to work in the hospitality industry, such as they have to be certified and they have to speak English. And they come over here and then we, as employers, field them, we have to negotiate a place to stay and it's all figured in their salary. They pay taxes just like all the other workers here in this country.

And that would be a great option. But that could be opened up through pooling through associations and getting lists of names that we could try to use in particular areas, such as Chicago or even in McHenry County.

CHAIR ABLAN: Is there currently any one in the United States that does something like that? You know, like you contract with a foreign country. Can you contract with companies in the United States? Small businesses maybe could do something like that.

MR. MOY: We haven't done that because of the as small business people we have to follow those regulations and the paper work of the H2B visa.

CHAIR ABLAN: So by contracting with a foreign country and going through their companies they circumvent this process?

MR. MOY: They circumvent it because they're coming in en masse. What I'm proposing is is that associations could then be our representative to work through these visas.

CHAIR ABLAN: So you'll use the Restaurant Association or whatever to be the vehicle in the United States?

MR. MOY: Exactly right. That could be an option.

MR. MAGGETT: Hi Perry, I'm from Michigan. This is the first time I've heard about this, what is it called, H2 visa.

MR. MOY: H2B visa.

MR. MAGGETT: One of the things that I'm noticing a lot as I travel in Michigan is they're having a lot of people, as an example in McDonalds, from Latin countries. So from you I'm trying to find out what's the time span been, number one, and number two are there any specific countries that are targeted for this H2 visa?

MR. MOY: I think that the INS, together with the Department of Labor, could work some partnerships with countries that would fill the needs of entry level type workers in this country. I think we could begin a partnership process that could open up all those gates. I think that's a realistic idea. Because we have high tech jobs that with contract visas. But what we're missing is entry level type of visa that can be used for restaurants and other small businesses.

MALE VOICE: Perry, how do you answer the accusation, I guess, or the question here from Government agencies that there really isn't any worker shortage but there is a pay problem. That they would; could they argue, gee well, you know, if you paid your employees twenty dollars an hour you'd have all the employees you want.

MR. MOY: No, we know, as an association and as a small businessman, I have dissected that problem myself personally. Like I referred to in my testimony, lifestyle and parenting

changes have now replaced the Johnny-Go-to-Work situation. That used to be a great training ground and confidence builder and self confidence builder within a young person to go get that job.

Now our parenting ideas have changed. We have now asked our children, well Johnny doesn't have to work now but maybe he should go out for football or play or read a book. And we as baby boomers have changed that ourselves, but yet cause a percentage of that labor shortage. The other thing is is that you refer to the pay process. We pay the minimum wage and more. We have flexible hours.

The Department of Labor has worked with the Restaurant Association to make sure that young people, especially, work a particular amount of hours per week, taking in mind their schooling. The second thing is is that we at my restaurant always look to their schedule, outside schedule. Independent schedule. That's such as their prom and their football games and things like that.

And we work closely with them. I still reach to high school help. I'm one of the few restauranteurs that do. In McHenry County alone seventy-five percent of the restaurants in McHenry County are run by eighty-percent minority help. So I'm still drawing to high school help. And the twenty dollars per hour, if you pay more I don't think that it's fair.

CHAIR ABLAN: Thank you. Is Jim Tunney here? Okay. Mark

Denzler.

MR. DENZLER: Good morning. My name is Mark Denzler. I'm Associate Director of Governmental Affairs for the Illinois Manufacturers Association. The IMA represents more than forty-two hundred companies that are located or operating in Illinois, of which over seventy percent are small businesses.

As was said earlier, many of the large businesses have the resources to comply with different mandates and regulations, but the small businesses struggle. Although I do not hold myself out to be an expert on many of the specific regulations oftentimes I'm at the end of a phone call from our member companies who complain or have come in contact with these different regulations.

On behalf of the IMA I would like to express appreciation to the Board for coming to Illinois and to Congressman Manzullo for his vigor and his interest in helping businesses, not only in his district but across the State of Illinois, to meet these different regulations and requirements.

Former Governor Jim Thompson used to comment on the virtues of the IMA. And we have the Mississippi Bluffs, we have the large urban center in Chicago, we have the coal mines of Southern Illinois and the agricultural plains in Central Illinois. And manufacturing is as diverse in this State as the terrain in the different regions. The size and the scope of what they do varies greatly.

And it's interesting the Illinois Manufacturers Association was created in 1893 with the sole intent and purpose of what the manufacturers could do to influence the laws and regulations that were being passed. More than a century ago and today we're still dealing with the same type of thing.

Both the State and Federal Government provide an array of programs and services to assist these businesses and promote economic vitality. While Government at times takes great strides to promote a healthy economy it also apparently creates barriers to business growth. The regulatory/enforcement realm of government does add some value to society. However, as I said, it can create obstacles.

Government needs to focus its business resources and make the public more aware of these services and where to turn for help. While simultaneously providing a regulatory enforcement environment that facilitates cooperation, not confrontation. The incremental expansion of Government services and requirements has resulted in a magnitude of Government departments creating a complex maze in which businesses have to operate.

This type of environment is not conducive. One only has to look within the State of Illinois to realize the scope of this. There are more than three hundred and seventy different permits, licenses, requirements that a business possibly has to apply for. However, Illinois also has twenty-eight hundred rules, statutes,

regulations that govern these laws. One can only think that the Federal committee is even more hassling.

It's nearly impossible for small businesses to read and understand completely all these rules and regulations. One of the largest impediments to the growth of new business and job creation is dealing with the regulatory committee requirements. As the Congressman noted earlier the cost of this is roughly seven hundred million dollars or seven thousand dollars per household.

In 1995, only five years ago, the cost was only four hundred million, so you can see it's nearly doubled in the last five years. The State of Illinois has begun arranging for a review process market. The Department of Congress and Community Affairs has been wonderful to work with. Industry is a key part of the process. That's why we appreciate this hearing.

Because, as you know, Government can't sit there and offer all the solutions. Business has to be a part of that. I appreciate the Regulator Fairness Program coming here. I encourage you to look at the resolutions that most impact business. Which of these are the most burdensome, costly, time consuming. And look at regulations that are either limited to public health and safety and which ones are not.

CHAIR ABLAN: Thank you. If you had a wish list what would be the number one and number two priority in terms of changes?

MR. DENZLER: I think the number one issue that we constantly hear about is environmental rules and regulations. It seems like we have to go to several different agencies (interposing)

CHAIR ABLAN: Within EPA?

MR. DENZLER: To get answers. Right, within committees. Often times they'll call five different people and get five different answers. And so what could be a small problem that could be worked out quickly oftentimes may take you two or three days on the phone to find the right person.

CHAIR ABLAN: Questions?

MR. HEXTER: You understand that the SBREFA process is a Federal process and that we are encouraging at each State level that an equivalent program be developed on the State level because you've got conflicting requirements; what you're dealing with are your manufacturers who are trying to satisfy Federal EPA as well as State EPA.

CHAIR ABLAN: But we're trying to get a law enacted in every state, like Hawaii and Kentucky and a few other states have done. They've enacted a State SBREFA. So we encourage all of you to go lobby for that. At the State level. All right, thank you very much.

MR. GEORGE: Good morning. My name is Scott George. I'm the

President of Mid America Hearing Center in Missouri. I have submitted my testimony and would ask that it all be entered in the record. We're a professional health care facility. We take care of thousands of hearing impaired Americans who benefit from amplification. Studies show that over twenty-five million Americans, one in ten, having hearing impairment.

And I'm here today from my small business because I and the thousands of hearing aide specialists across the country are greatly concerned. The FDA is advocating very significant changes to our industry. For the past seven years there's been FDA rules hanging over our industry like an anvil. It's unpublished and you never actually see it although you hear about it.

And basically what it's intended to do is totally restructure our industry. Hearing aide dispensing is done basically by three groups of people. Traditional hearing aide specialists, like myself. Audiologists, who have been trained for diseases of the ear. And thirdly would be ENTs (ear, nose and throat medical doctors). Back in 1993 when the FDA announced they were going to crack down on the industry. And what they were talking about was some publication publicity that they didn't even care for.

Sales slumped nationwide. And frankly our particular companies never really recovered. And one of the challenges is, when I said there was twenty-eight million Americans who have hearing impairment, only about one out of five actually seek help.

That's four out of five that we're not serving.

So what happened is when this came out in 1993 is that people lost confidence. They said, oh see, I wouldn't go get a hearing aide. And they didn't come see us. So what's the impact of that? From a business perspective we're trying to take care of these people. We feel like we have a service that they very much need. And there's been some studies recently which you might find interesting in that regard.

There are studies that show that people who wear hearing aides are less frustrated, less angry. Get along better with their spouse. I won't submit all that.

CHAIR ABLAN: Thank you.

MR. GEORGE: One of the things it showed was that if they put the gatekeeper in approximately ninety-two percent of the businesses like myself will be out of business immediately. We think that this rule is what I call midnight regulation. It's a rush to regulation occurring at the end of this Administration. And one of our sources in Washington says the EPA has sixty-eight rules ready to go.

One of the requirements of the SBREFA which created this void is that they can; the agency must conduct initial regulatory analysis to determine if it has impact on small business.

Well if it takes effect it will drive ninety-two percent of us out of business. As far as I know no such evaluation has taken place.

So what I'm really asking of the FDA is they meet their obligations and don't let this happen. Finally, the last thing that I ask is that if what they are going to do is advocate crippling our businesses. And I understand they're represented here today. And basically I ask the FDA to stop with that census. Don't do this, it's bad for us. Thank you very much.

CHAIR ABLAN: Thank you. John?

MR. HEXTER: Usually regulation is designed to attack some kind of a perceived problem. Can you describe; if you make an assumption; I'll make an assumption that the non-medical dispensers of hearing aides are dispensing hearing aides to people who don't need them. So we need a rule. What measures are in the marketplace of need?

You said twenty percent are being served, eight percent are not being served. How do we know that? Where does that come from?

MR. GEORGE: Well that comes from studies that they do. And they have made that particular estimate. That applies to whether or not we are doing a good job of evaluating hearing loss. First of all, ninety-five percent of all hearing impaired are not medically treatable. And about five percent may be medically treatable with medications and things like that.

In our evaluation process the FDA found eight criteria to look for. And any one of them are ifs. We refer to an ENT. In fact, one of the things in my testimony is one of our patients, from Missouri, came to one of our facilities down in Ransom, and we ran her through the evaluation process. Gave her an evaluation. And I'll just read the quote.

She says, without proper hearing evaluation I would never have gone back. I thank God for the test that my hearing specialist gave me. She's my angel. So we referred her to a hearing specialist and to an ENT. They performed surgery on her and she now does not wear a hearing aide. Those are the ones we live for.

As far as the success rate, and let's talk about success here. We use success rates from studies from our own company, and they're very good. One of the measures is tend to credit the industry. And so it runs about seven percent. In our particular company our practice is less than one percent. A hearing aide is a fashion accessory.

CHAIR ABLAN: Thank you. Any other questions? Thank you, Scott. Is Ray King here? Okay. Lloyd?

MR. FALCONER: Good morning. I too was a White House Conference delegate in 1995. And I want to thank you, Congressman Manzullo, Rockford College and all the other guests that testified here today. My name is Lloyd Falconer. I'm the Secretary-Treasurer

Seward Screw Products, Incorporated, located in Seward, Illinois. My company produces metal parts for original equipment manufacture.

In addition to being a small business owner I'm proud to be an active member of the National Federation of Independent Business. Commonly known NFIB. NFIB is the nation's largest small business advocacy organization and we represent six hundred thousand small business owners in all fifty states.

NFIB has served the needs of small business on a broad spectrum of issues. And has been a leader in fighting for regulatory fairness for small business. NFIB has been supportive of the Regulatory Fairness Board. These hearings provide an excellent opportunity for small business and our concern for regulatory enforcement and compliance issues and the Federal agencies that make sure that these comments are directed to the right people and they get a timely response.

Today I would like to discuss some of my experiences with a Federal regulatory agency. Two years ago, due to a miscommunication between our company and a third party administrator of our 401K profit sharing plan, Form 5500 was not submitted on time. Even though no money was involved when the form was scheduled to be submitted, it is only a report of what has already transpired.

The company was fined twenty-one hundred dollars for being late in submitting the form. It's my opinion that this money was wasted and came off the bottom line of our company's balance sheet. The U.S. Government has been promising its citizens that they're making forms less confusing and less wasteful over time.

I find that difficult to believe when in 1995 the instructions in relating forms for the 5500 report weighed three point three ounces. And in 1999 the same form weighed in at seven point seven ounces. That's a lot of trees and a lot of postage.

Moving on, the IRS agency is one that we occasionally have to deal with regarding proper payments. Approximately a year ago an error occurred and last week we believed that the problem has been resolved. On top of it all the IRS owed our company a refund, along with interest, which we will now have to report as income so that the IRS can tax us again. It seems to me they get us coming and going.

Our Federal payroll taxes and corporate taxes are now paid on time. And there have been several delays and considerable confusion regarding implementation of the law and finally making the practice mandatory. During the time that the law finally affected our company we've changed our banking affiliation. Which also meant that we needed to change where the funds would be removed to satisfy our tax law and requirements.

And even though we had found and paid all our taxes on time we were threatened with a nineteen thousand dollar fine because we had not filed it on time. Sixteen months later the IRS finally relented and dismissed the penalty, thank you.

The U.S. Department of Commerce, Bureau of the Census periodically requires that we submit answers to questions on the Form MC-3421. This Form contains about nine pages of questions that require many hours of research to develop the answers. Quoting from the Form it states, and I quote, your response is required by law. Title XIII, United States Code requires businesses and other organizations that receive this questionnaire to answer the questions and return the report to the Census Bureau.

By the same law those census reports are confidential. It may be seen only by Census Bureau employees and may be used only for statistical purposes. Further, copies retained in respondent's files are immune from being processed. End of quote.

My initial reaction to this request was, and remains today, that this information is really no one else's business. Secondly, since we now know that the Census Bureau has not always kept faith with the American public regarding confidentiality of information that they gather, we certainly have no reason to expect that they will do so now.

I think it is imperative that we be rid of this time wasting piece

of trivia. Moving on again, less than two years ago an employee was informed that his services would no longer be needed. This individual contacted OSHA and as a result an employee spent approximately fifty hours responding to the letter generated by OSHA (interposing)

CHAIR ABLAN: Lloyd, you have another minute.

MR. FALCONER: I'll be done. Even though we had been in compliance with the law we spent several hundred dollars on improvements and had documented photographs sent to OSHA. The same individual also contacted the EPA. And an agent from the EPA and a State Policeman appeared in our lobby. They requested that they be allowed to conduct an inspection.

While they are not allowed to name the party who makes the contact with the EPA, we were given the impression that this type of visit occurs frequently. And while the inspection did not turn up any evidence to corroborate the alleged infraction we noted that a follow up visit was made by an EPA employee later.

These are just a microcosm of events that occur on a daily basis in small businesses. Thank you.

CHAIR ABLAN: Thank you. Any questions? Did you have any recommendations?

MR. FALCONER: I think some of them have already been covered.

Maybe timely responses are important. I think evaluation of what the unintended consequences are of a regulation are very important. I think that we recall a certain gentleman a few years ago said the subtle sign is the jobs leaving this country. And I'll be honest with you, it's my opinion that our regulatory and taxing policies are berating us.

I think they need to remember that even though we look at the Fortune 500 companies as being targets for that, that really also affects small businesses because small business employs fifty-three percent of the people in this country.

CHAIR ABLAN: Thank you very much. Is Gail here? All right, is a Jim Randolph here? Okay, Mike Hansen?

MR. HANSEN: Thank you for this opportunity. My colleague, Ron Deabler, and I would like to testify jointly as indicated. So hopefully we'll get ten minutes. Thanks much. I'm an ordinary small business owner. I'm also the President of the Independent Business Association of Wisconsin. We represent five hundred small businesses in Wisconsin.

We are a number driven organization, which means that we small business owners don't have hired guns. We do our own lobbying at the Federal and at the State level. First of all, regulations, as has already been pointed out by a number of presenters today, are really a very hidden task in this small business income statement.

And they actually probably suck out more capital out of our businesses than the actually taxes do.

And when capital is sucked out of our businesses what happens is we don't have the resources to grow our businesses. And if our businesses don't grow there's not economic development and there's not job creation. One of the things that we would strongly urge is that impact studies are diligently produced on all proposed significant regulations. And impact studies meaning what is the cost, the true cost versus the benefit of the regulation.

Also one of the things that we would like; you know this is pie in the sky stuff. And this is the form that would suggest pie in the sky things. You know, regulations need to have a sunset. Every regulation that comes down the pike should have a sunset provision. Whether it's ten years, five years or one year.

What happens is, and God bless the people from the Government here, but you're no different than I am as a small business person. As a small business person my goal is to grow my business. That's human nature. And I contend that Government and any person that is within the regulatory body his objective is either to grow or to justify his existence.

And that's human nature. We all have this human nature to protect ourselves or to grow our selves. And with that comes cost. The cost is threefold. We have tremendous costs within our

own small businesses to comply with these regulations. And then on the other side the Government has their compliance people coming in, that's a huge cost.

And I think this today validates the other cost, the Ombudsman involved in the administration process involved with every regulation and every bureaucracy that comes down the pike. So please, please at a minimum, if people are not going to really do cost benefit studies that are factual let's put a sunset on all existing regulations and all future regulations.

I will now defer to Ron Deabler and Ron will talk about three specific areas. And then I'll close when Ron's done.

MR. DEABLER: Thank you. I would like to speak first about the statement from Internal Revenue Service. I have in my hands the 1999 GAO report which I think is contained in the information that I handed to you. Now you may not want to read it all but you might want to read the first few paragraphs of the opinion page. That states that under the audit standards, the standards set by the United States Government to audit governmental entities, the IRS is unauditabile in absolutely every area except one.

They were able to render an opinion on its balance sheet, its income statement, its statement of changes, its budgetary resources and its findings. And I would urge you all to take a peek at this. Further, there are considerable material weaknesses

in every single area of internal control within the Internal Revenue Service.

And it was found that it was not in compliance with most of the provisions and laws and regulations with respect to the Federal Financial Management Improvement Act of 1996. Now, it also states that there have been improvements over the course of the years. Now if you read this report, and particularly pay attention to the first few pages of it, you'll see that GAO office audited the IRS for seven years.

The limited improvements have occurred over the seven years. However, this same report has been issued for seven years. They are unable to opine on any of the areas financially related and materially weaknesses to the internal controls continue to persist. I'm not going to get into a discussion of internal controls but I will say one of the areas is computer security. The IRS does not have the capability to have its computers secured.

And right down the line they can't track where their assets are. They can't reconcile their check book. All I have to say is every small business person in this room is held to a standard that is much higher than our own IRS. And on top of it if any business like this was run in the world it would fail, okay?

You know, if a SEC company had an audit report like this their

management would be thrown out of the place. My recommendation is to find a way to either privatize or incentivize management of the IRS to get its act together. And at a minimum figure out its computer security and reconcile its own checkbook.

I'd like to talk quickly about the Department of Labor. The Department of Labor in Wisconsin, and the Department of Labor in Washington has overruled a old rule, not an old rule a court precedent in Wisconsin regarding applications for new work. The definition of new work, basically what happens is a person that's working at a company currently changes job classifications, perhaps he's a welder and he goes to fabricator.

The Department of Labor suggests that this person can quit his job and collect unemployment benefits. There are court precedents in Wisconsin that suggest this cannot happen. Further, many collective bargaining agreements related to unions allow these types of jobs and transfers. And I'm talking with an equal amount of pay or an increased amount of pay.

The Federal Government, the Department of Labor, has suggested that we are able to let these people quit because they've got a simple change of job classification. This is a dangerous, dangerous thing to have occur. Where the Federal Government says we're going to overrule court precedent and we're going to overrule any collective bargaining agreements that exist.

Thirdly, I'd like to talk briefly about EPA reporting. As you all know in recent times, and that's not in Rockford but in Milwaukee, Chicago, there are (interposing)

CHAIR ABLAN: You have thirty seconds.

MR. DEABLER: Okay, that's fine. All I would like to say is that there are eight different EPA mandated fuels that are used throughout this country. And this is ridiculous. There's empirical data that suggest not only does this reformulated fuel increase the amount of pollution in the air, but it certainly does not decrease it. And all I'm suggesting in this particular case is that if you want to make this fuel available make it available on a voluntary basis. And use one mixture throughout the entire country.

CHAIR ABLAN: Thank you. Mike, you've got a minute and a half.

MR. HANSEN: Just in closing, we understand that the format of the Board is to talk about regulations. But we'd also like to make a pitch that recently enacted was the installment sale method for taxes.

CHAIR ABLAN: We're quite familiar with it. Right.

MR. HANSEN: Okay, very good. That is the major problem from a cash flow standpoint. They have to recognize everything (interposing)

CHAIR ABLAN: I'll give you an extra minute to explain to people, business owners that might not know about it, because it is a really important issue.

MR. HANSEN: Well under the installment sale method an owner cannot sell his or her company to a publicly treated company to give cash immediately. And then you'd have the money to pay the taxes. Oftentimes we'll be selling out to our kids or to someone else in our industry that might not be cash rich. We would take forty percent down and then add sixty percent as a note.

Well under this elimination of the installment method you have to pay tax on one hundred percent of the deal and you only receive forty percent of the cash. It's a huge problem.

CHAIR ABLAN: It's awful.

MR. HANSEN: This inequity is obvious. The other thing is medical savings accounts. We think medical savings accounts are a win for doctors, are a win for the consumer, and they're a win for the small business owners. We've got to do two things, if you would, get the employees and open it up to General Motors, because that will create the marketplace.

We need the big boys in there to create the demand so the insurance companies create the product. The other thing in medical savings accounts there's a big problem. You get your umbrella insurance for your cash. Roughly it costs three thousand

dollars. But your medical savings account is only a fifteen hundred dollars, or sixteen hundred. So you have this gap of fourteen hundred. And people are not, especially all of our people on the floor, they're not willing to take that risk.

So we need to get rid of that gap. And I contend some of the people involved in developing these things knew exactly what the consequences were going to be. And my final other issue is social security. We'd like the privatization. It would go a long way; for our case.

CHAIR ABLAN: Thank you very much, Mike. Any other questions?

MR. RIBBLE: How many players do you have?

MR. HANSEN: At our Warsaw facility we have about a hundred and eight. In Merrill we have about a hundred and twenty-three. And in Rhinelander about sixty-seven.

MR. RIBBLE: And how are you managing your health insurance for your employees now? What type of quote?

MR. HANSEN: We were just hit in March with, I think a forty percent increase or forty-one percent increase. And the way we managed it is we got the higher cold case and the higher deductibles. And we still ended up with about a twenty-seven percent increase. To us. And then our employees, because the cold case are up,; it hits them dramatically.

CHAIR ABLAN: Thank you very much. Marc Vuletich.

MR. VULETICH: There's been a lot of smooth speakers here today. Well versed. I'm a little rough around the edges than these people so you'll have to bear with me. Government agencies are like bees flying around my head. I can't swat them away. They come and sting me. What Larry said about the EEO rings true with me. We get disgruntled employees fired for absenteeism. Next thing you know there's an EEO suit.

I've had fourteen of them in the last two years. Not one of which was a valid suit. They've all been thrown out. But we had to spend a lot of money doing it. One of the reasons that I have injury rate we were targeted for an inspection by OSHA because of our injury rate. One of the reasons is I've got lawyers and human resources people telling me now that when I interview a guy for a job in the shop and he's got carpal tunnel syndrome I have to hire him.

A month later I have to fix it. Then I have to pay them twenty thousand dollars because of the workers comp clause in this State. This brings your injury rate up. We don't have people falling off the roofs. We don't have people getting run over by lift trucks. We have a terrible problem with these repetitive type of stress injuries.

Anyway, that brings me to my subject. And it's OSHA. We were

visited in April of 1998. They announced that they were targeting silicosis exposure and record keeping. They stayed with us six months. Now the time and effort and the money spent just to have my people with the OSHA people for six months is, you know, in the thirty, forty thousand dollar area.

After six months they told us they were going to fine us a million dollars. But they said we'll only fine you five hundred thousand if you'll pay it up front without a fight and we won't put a press release in. In other words, our Government tried to blackmail us through a press release. I didn't believe this. I asked him to call me to the conference because I want hear this.

Our Government will supply people with a press release. So we said no. Well we arrived at four hundred and five thousand dollars fine. Now going over the citations we had the usual stuff. A guard rail missing here. We had golf carts and were fined five thousand dollars because of the players riding on the back of a golf cart. I've seen President Clinton with Vernon Jordan in a golf cart with a security agent in the back.

We got fined five thousand dollars. Now I didn't know this was against the law. And what OSHA has is what they call a general duty clause. This is a clause, it's 5A1, it says shall furnish to each of his employees an employment and a place of an employment which is free from recognized hazards. that are likely to cause death or serious physical harm.

Okay, I get fined five thousand because they hang on the back of a golf cart. I mean, this statute. That's incredible to me. It's called a general duty clause. Now silicosis, they came in with the intent to make an example of us for silicosis for the rest of the time. They announced this when they came in. In my opinion they picked the wrong finding. We knew about silicosis. We knew we had high levels from 1991.

We had a ten year program, ten million dollars, to replace our dust collectors and upgrade them. And we ramped up our production to meet the demands of the trucking industry. We had regenerated more dust and we had to spend some serious money. When they came in we were on strike. They went away, they came back when the employees came back work. And they got a lot of their information from the injured and disgruntled employees.

Now we showed them monies already spent. We showed them the requisition for a two million dust collector. They said we developed this requisition just because they were there. Not even engineers and they know you're not going to make a two million dust collector in one day. You'd have to do the study, the engineering study, and the quotes. All this type of stuff. It was a huge project.

It had already been started when they were there. Anyway, they did their studies. They fined us seventy thousand dollars for a medical monitoring program. Now this isn't in the statute. This

is under their general duty clause again. We had a medical monitor program ourselves. We x-rayed our employees every year to make sure their lungs were okay. They went back three years and found out that at one time we had five hundred employees.

During the transition between we referred all of our workers to a outside medical outfit. We missed two x-rays. They fined me seventy thousand dollars. It's ridiculous.

CHAIR ABLAN: Marc, one minute.

MR. VULETICH: One minute. They fined us fifty-five thousand dollars because we had an accumulation of sand in our basement. They called it willful. I explained to them we had a sand belt break and it dumped forty or fifty tons of sand in the basement. You can't get down there and clean it out. They fined me fifty-five thousand dollars. I had no clue that there's a Government regulatory agency that can fine me fifty-five thousand dollars because I had sand in my basement.

All this is in trial. Naturally a trial is expensive. We paid off a lot of it. The golf cart, we actually paid on that. Because it's better than going to trial. We have a lot of machines to test employees every year. They went back three years and found two employees that weren't tested. Seventy thousand dollar fine.

Now my point here is these regulations are fine. You can never know how many they are or what they mean. But the enforcement

should be used with a little logic. If you come in and you fine somebody seventy thousand dollars because they missed two hearing tests three years ago.

And they bought a machine and they're testing employees every day. Or every year. Not only current employees. One of the tests was three years old. This is ridiculous.

I don't know who calls the shots. We were fined seventy thousand dollars for a respirator program. Because some of the employees weren't wearing their respirators properly. Not one employee for six months did they find without a respirator on. They had already determined that they were going to fine us. So they slapped seventy thousand dollars.

CHAIR ABLAN: Thank you, Marc. Questions?

MR. HEXTER: The issue of equity and fairness in applying the; both the fines and the enforcement issues, how big a company dollar are we talking about?

MR. VULETICH: We have two hundred employees.

MR. HEXTER: Two hundred employees. The four hundred thousand dollar final settlement that their offer was, that's in trial?

MR. VULETICH: Yes. We divided it into two situations, safety and health. The safety issues were the guard rails missing, the golf carts, things like this. We paid this off because it was cheaper

for us to do that. Now we're subject the next time if they come in to a seventy thousand dollar fine if they see somebody riding on the back of a golf cart. Of course we threatened all our employees with hanging if they ride on the back of a golf cart.

MR. HEXTER: Well we have a constant feedback that we can set the rules, but if they violate the rules you're liable. The same thing with the respirators and so forth. If you've supplied them with the safety equipment and the training that ought to be adequate.

MR. VULETICH: After trial we had the union president tell me that our employees intentionally were pulling the respirators off after the strike during an OSHA visit. He told me. They still didn't back off. We went through the administrative procedures to try and settle the case and finally went to the Administrative Judge.

And my point is that first off this general duty clause is ridiculous. It's an opinion. You don't know that you're violating some regulation until you're actually in the grasp. In our case it was very offensive. Same with the sand in the basement. Fifty-five thousand for sand in the basement. I don't see the danger to employees. No.

CONGRESSMAN MANZULLO: I want to thank you because you're testifying to, these are the hidden costs. I'm very much interested in the fact that OSHA fined you. What you're

testifying to is nothing less than epidemic. A regulatory bazaar, incredible things that are happening to us in America today.

MALE VOICE: Madam Chair, I have a question. With this harsh treatment do you feel, Marc, that there was some reason for it? What's the background? What's the problem.

MR. VULETICH: There's no question in my mind that they had targeted me. They were given some edict to try to find silicosis. But I think some of the other things were a result of their interviews with employees right after a bitter strike. For instance, the sand in the basement. But I can't imagine because the fines are astounding. To be willful is really a slap in the face. Because willful means you're ignoring a known hazard purposely.

And we got fined willfully for silicosis when we had a respirator program. Well enforced. We gave them over a hundred pieces of discipline for people not wearing their respirators properly. A hundred pieces. They still said it was willful. They said we weren't putting in engineering controls when we had spent already three million dollars and we had another seven million slated. And had the requisitions in front of them. Which, by the way, is done now. We're having our air tested next week and I'm sure it will be fine. But I don't know where the punitive nature came from. Maybe it's my personality. Something went haywire.

MS. MCDONALD: Is the time they spent there unusual? Six months is such a long time.

MR. VULETICH: I've been in this business for thirty-five years and been visited by OSHA probably every year of the thirty-five. I've never seen an inspection go six months. And the reason was because of the ear testing. And they also brought experts on ventilation into it. And they spent a day and a half there. It's an eight hundred thousand square foot shop.

MR. CLEMENSON: Do you have an association or other foundries which you associate with?

MR. VULETICH: Yes.

MR. CLEMENSON: And the reason for my question is do they have the same problems you do?

MR. VULETICH: Yes. As a matter of fact it's called the American Foundering Society. And we went to them to find out what was happening in the industry. And they said, yes, we know full well that foundries have been targeted for silicosis. And the silicosis is a disease, there's no question about it. It's caused by silicon sand. In my thirty-five years I've never seen a case that wasn't a heavy smoker. I'm speaking at the Society meeting tomorrow night. It's the State Line Chapter. Detailing some of the things that happened. Yes, we do communicate.

There was no question in our mind when they came in that we were a target. Other foundries have been targeted. But we were the lead case and that's why they wouldn't let it go. Even though we had the engineering controls already being purchased. And we had the respirator program. They would not let it go. I tell you, they looked at us as the enemy.

CHAIR ABLAN: If others who are similarly situated will contact us it helps us to have a good overview of the industry. Thank you for coming. We have three other people.

MR. HENRIKSEN: My name is John Henriksen. I represent the Illinois Association of Coal Producers. Our association has a hundred and eleven producing members. Range in size from mom and pop operations to my less than a hundred thousand tons a year to companies that mine over ten million. We operate in eighty out of a hundred counties. I extend my appreciation to the Board for the opportunity to testify regarding the impact of the Federal Mine, Safety and Health Administration.

I especially want to thank the National Ombudsman, Gail McDonald, for telling me about this. I have at least four of my members in the audience who answered Gail's request that they come and talk about their real life problems that they run into in their business. As you may or may not know the coal mining industry is a very heavily regulated industry. All at State and Federal.

It's unfortunate though that I received the most complaints by one agency, the Mine, Safety and Health Administration. My members regard their activities at the mines as the most punitive and most inconsistent regulatory process they encounter. And they encounter a wide range of processes. Our association and our industry is committed to worker safety.

We were the first State to put in a training program to get our industry up to speed regarding mine safety training program rules. We followed up on this training last year with the transitional target, not only my members but people who were not members, to make sure they're in compliance with safety rules. We recognize that effective health and safety training is critical to our industry.

We embarked upon this joint training program last year based upon a spirit of cooperation. We hoped that working with MSHA and these new mine safety rules would serve as a catalyst for a new era of cooperation. But our hopes have been dampened in the past few months as we have seen MSHA unleash a new onslaught of enforcement activities.

Another round that we fill is focused solely on issuing citations and collecting penalties rather than helping us create a safe and healthy working environment. I have some paper I'll leave with you that has some more information. But bear in mind prior to coming to work with my association I worked as an enforcement

attorney for both the Kentucky and Illinois State Programs that regulate ore extraction.

I had the opportunity in Kentucky and Illinois to participate in regulatory programs. And I had the opportunity as a State employee of both States to observe programs that worked and programs that do not work. Based upon these observations and applying them to this association I strongly agree that MSHA has three core problems.

Rigid statutory enforcement scheme. Vague regulatory standards and inadequate management. MSHA's first core problem, a rigid statutory enforcement scheme, arises from the structure that mine safety held back itself. Under Section 104A of this Act an MSHA inspector has to write any violation observed. No matter how insignificant and no matter if the violation has no relationship at all to worker safety.

The structural defect in the law in my opinion results in MSHA's rigid enforcement posture and institutional bias to write violations every time they come on a property to do an inspection. Secondly, and more significantly, many of MSHA's rules are extremely vague and therefore subject to arbitrary application. This vagueness results in the biggest single complaint I hear about MSHA inspectors.

There is a total lack of consistency in enforcement of Federal

Mine, Safety and Health rules. Every producer I've talked to, in this State or any State we deal with, will tell you there's little consistency among inspectors within a field office. More significantly, there's little consistency in the way that different field offices will inspect the same operation.

The SBA Fairness Board for Region VII recently heard from a number of Iowa producers who were complaining about extraordinary violation citing. They felt exploited by MSHA during the last two years. This change occurred solely because the Iowa mines are now being inspected out of a different office.

Finally, we believe that MSHA also suffers from inadequate management. Earlier I heard a lot of complaints about inconsistent enforcement. About being cited for violations that previous inspectors didn't consider a problem. These complaints are the result of managerial failure to issue a regulatory standard or enforce fairly and consistently.

In addition, association members of all sizes complain about the belligerent attitudes displayed by some MSHA mine inspectors who come on their property. Association members routinely complain that some of MSHA's enforcement personnel begin an inspection spoiling for a fight. And some of these personnel look at our members as the enemy rather than what we are and what we should be, which are partners in safety.

CHAIR ABLAN: Time for you to wind up.

MR. HENRIKSEN: Thank you. For these problems I think we have three feasible solutions. First we should reform the Mine, Safety and Health Act to change it to give these inspectors more discretion to issue or not issue a citation. In essence, inspectors should be allowed to give mine operators warnings instead of citations where appropriate. This change would begin the process of changing from revenue generated to a partner in safety.

Secondly, MSHA needs to work with our industry in order to carefully review the mine safety and health regulations enforced by its inspectors. Our industry and MSHA need to work together to codify standards. And by doing so we will make inspections more consistent.

And finally, MSHA needs to institute a training system in management and policies that ensure we're treated with the respect we deserve from our Government. They need to understand that our industry is very different from the underground coal mine, the industry that MSHA was created to regulate. We recognize, and I recognize as an old regulator, that MSHA needs the right to make unwarranted searches. They need to come out anytime to prevent worker injuries.

But we need MSHA to ensure that their workers and inspectors

adhere to the same checking procedures and hazardous awareness process that we cause our people to go through. And finally, MSHA management needs to take great steps to ensure that all inspectors within their field office cite violations in a similar and consistent manner.

Having said all that, we want to commend MSHA for one very positive thing they've done in the past couple of years. They created the Educational Field Services Unit. It's not an enforcement unit. We've got a member of that particular unit on our safety committee. And they work with us on seminars. And they focus on worker safety rather than generating penalties. We commend MSHA for creating this type of unit.

To sum up, we stand ready to work with MSHA to try to make the rules less vague so that we can have consistent enforcement. We'd like to partner with them if possible to reform the Mine Act if appropriate. To make it possible for them to come on our properties and give our workers warnings rather than citations. And last but not least, I encourage MSHA to work with us to open up a trend and let their inspectors come on to our properties as part of their training process.

And know that we're a different type of operation than a coal mine. To know that we are structured differently. Thank you.

CHAIR ABLAN: Do any of you want to testify? You're more than

welcome.

MR. CLEMENSON: I've got a question. In your testimony it appears that you're, and correct me if I'm wrong, confused with coal mining versus aggregate mining, is that what I'm hearing or am I?

MR. HENRIKSEN: Well we're not. The problem is MSHA has a pretty broad mission. Not only do they regulate mine safety and health at aggregate mines, they also regulate health and safety in coal mines. And we've found in our experience that many inspectors who come on our properties either are from the coal mining background or from coal mining regions and don't really have an understanding that our operation is very different from the coal mines.

They're in different operations and structured very differently. And the problem is we don't feel the inspector really does a good job in differentiating between coal mines and aggregate mines. Some of the members in the room here might be able to expand on the idea of some of the problems.

CHAIR ABLAN: Does anyone want to testify? Come on up.

MS. MCDONALD: I was wondering if, given your long experience in the industry if you had seen changes in MSHA's approach to your members since the passage of SBREFA? Which happened in 1996. Have they instituted some programs to reach out to small business people, partnership?

MR. HENRIKSEN: Not that I'm aware of specifically. I'm positive it has encouraged this educational field service unit. Which we're tickled about because those folks have been very helpful.

MR. MCGWIRE: I testified in Des Moines in Region VII. And I've just got a couple of notes to probably support a little bit of what John has just said. In the last two or three years we have received more citations than we probably got in the fifty years before that. But I won't argue. We did some things, a hand rail broke or something like that and we'd get a citation. If I spent a day in anybody's shop I could probably find fifty citations, I don't care what business you're in. That's just the way it is.

But I think the thing that bothers me most in the last year that I have seen and that is the consistency issue. And as we sit her I can guarantee you that we are getting citations out of the Illinois office. Let's call it like it is, that's the office that's giving us problems.

And in Kansas and Missouri the aggregate operators are not getting cited for the same things. So there's no consistency, not only between inspectors out of the same office, or offices in the same region, there's no consistency between regions from State to State.

I've been around this business for twenty years and I don't know a producer that will challenge or argue about the need for MSHA to

regulate and inspect. And the thing that I found most was the consistency deal. We had an incident last year where the inspector came in, his attitude, you know, he came and flipped his badge and said I'm not an inspector, I'm an investigator. And he marched on like he was in Dodge City.

As a result of that inspection I would say their attitude towards safety and their attitude toward MSHA had dropped substantially. They said, you know, what's the deal here? You know, we have not had an injury here in the last fifteen years and this guy comes off and accuses us of being just terrible.

I mean it really upset our crew. And that; those are some of the things. Another one in Iowa where the inspector gave us a valid citation. And the gentleman challenged it and he was told that in MSHA

s mindset we got more powers than the FBI, CIA, we almost probably got more power than God. You know, I mean that's the kinds of things that we're telling. Didn't used to happen. Just the last couple of years. I don't know what's going on.

MALE VOICE: Well you say that for more than one inspector? Is there one particular investigator, shall we say, that's causing the problem here or is three or four, five people?

MR. MCGWIRE: Well just down in Des Moines. It's coming out of the Peru, Illinois office.

MALE VOICE: And how many inspectors do they have there, do you know?

MR. MCGWIRE: I don't now. But there's no consistency. We had one inspector come to our office and did an inspection. He did a thorough inspection. He said there's this problem but these don't need to be targeted. But if you want to do it, it would be okay. It's just a medicinal thing. Two weeks later another inspector comes in and he cited us for those same things that the other one out of the same office said we didn't need to be targeted. You know, what do we do?

MALE VOICE: Have you ever had an inspector come in and say hey here's what I found. I'm going to give you twenty-four hours or forty-eight hours to correct these problems. I'm going to stop back and see that they're done.

MR. MCGWIRE: If I answer that question I'd probably end up in trouble. But yes, they used to do that.

MALE VOICE: So they used to be more of a partner interested in employee safety. Here's some things you can do.

MR. MCGWIRE: Yes. And there's some really good people in MSHA. I don't want to give the impression that there's not. I've known a lot of them over the years that I've had a really good relationship with. Consistency is the problem.

CHAIR ABLAN: Anyone else from that group?

MR. WEIMAN: My name is Dale Weiman. We run the rock and sand gravel division. And I want to add to some of the sentiments that the people previously have mentioned. The MSHA inspectors that come on the facility generally speaking they're very good. But you run into a few men come in with their guns loaded. And I try to promote to these gentlemen are they educators or are they enforcers?

No, we want to be educators. It's kind of hard to tell one of your employees that you get a cite for a guarding or maybe a fire extinguisher that hasn't been inspected or maybe it got torn off, that we get cited for that. And your employee goes jeepers you knew we were in violation? No, I didn't know we were in violation. But I think the severity of some of these citations are frivolous.

You know, it's just time consuming on their part, our part. Look at the past history of what the company does. I think that should be taken into consideration. What you're doing. The past practices. The employee himself, has he been trained since? These inspectors should be more educators than enforcers.

With that, at a time when you call them a teacher or not, there's a grading system. You give a student a warning. Tell them, yes, this is fine what you're doing. You did a good job here but you

got to go one step further. I'm going to give you two weeks, that twenty-four hours or two weeks. We need that.

In a company that's spread out with, depending on our work force, a hundred to a hundred and fifty people, and you're spread out in a fifty mile area, it's difficult for the safety administrator to cover all of them. Sometimes a foreman has a problem. Is it a life, death crisis? No, it isn't. But it needs to be addressed. But the MSHA inspector comes in, we need a little window to address these issues.

If it's life threatening, definitely. You stop the operation and all of us understand that. That's the most important asset that we have. But I'm looking for a bigger window over the small citations that we can address without fines. I don't think there needs to be a seventy eighty dollar fine for a non-S&S, which is a non-serious citation. Thank you.

CHAIR ABLAN: Thank you. Anyone else from that group?

MS. RUSSEL: I was trained to do safety training. In 1996 we had no citations. In 1997, no citations, 1998, fifty dollar citation for a no smoking sign. Last year we had one S&S, which was a seat belt that the seat had been changed and was not replaced.

Then this year we had seven S&S's. Nothing's been changed. Same. Different inspectors. He charged on the property. Never checked in. Was out of his vehicle on operating equipment. It's been a

nightmare. So if you have any questions I'd be glad to answer them.

CHAIR ABLAN: Any questions?

MS. MCDONALD: When they come out do they tell you about, for example, this program? That you have a right to regulatory fairness?

MS. RUSSEL: No. No. He didn't tell me at the time. But how did we go from none to seven.

MS. MCDONALD: How long do the inspections usually last when they come?

MS. RUSSEL: Usually they're never more than one day. And he's been there twice.

MALE VOICE: Did I hear you say they don't check in with you when they come into your property?

MS. RUSSEL: All the inspectors in previous years always checked in. And he didn't. He just told the crane operator call her. He didn't notify anybody he was here. I don't know if that's against the rules down there.

CHAIR ABLAN: Is this the same inspector in all these cases? Do we know? Is it one inspector?

MS. RUSSEL: (not speaking into microphone)

CHAIR ABLAN: Is there a concern in the industry among the companies in terms of repercussions from agents?

MS. RUSSEL: Oh yes.

CHAIR ABLAN: We need this for the record.

MR. HENRICKSEN: (not speaking into microphone)

CHAIR ABLAN: You're afraid of retribution?

MR. HENRICKSEN: (not speaking into microphone) find ways to shut your operation down.

CHAIR ABLAN: That's the threat.

MR. HENRICKSEN: That is the threat (not speaking into microphone). There are some good people out there. That's one of the reasons we suggest change the statutes. These inspectors are out not for safety (not speaking into microphone).

CHAIR ABLAN: Thank you.

MS. RUSSEL: I would like to add one thing (not speaking into microphone) this same inspector (not speaking into microphone)

CHAIR ABLAN: Thank you very much. Does anyone else want to testify before we take a break?

MR. BABENHAUSEN: My name is Jim Babenhausen. We're a small business out of Moyne, Illinois. We operate approximately thirty-

six facilities in three States, Iowa, Illinois and Missouri. We're inspected out of four different field offices. Two different districts. And I can again attest the inconsistencies between field offices. Between the inspectors and between the districts in how we are regulated.

I was certified in 1989 as a safety instructor by the Mine, Safety and Health Administration. I've also received my OSHA thirty hour card. I spend a lot of time in classes learning safe ways to teach our people. And we constantly fight with the inconsistencies of the inspectors as they come out. Whether it's guarding, you know there are so many difference between how you're allowed to guard things under MSHA or how you're allowed to guard things under OSHA.

There are some ways that OSHA has for guarding and allowing you to put a gate up and lock it and not allow persons into an area that may be hazardous. With a padlock or electrical interlocks. And OSHA thinks these things are all perfectly fine. MSHA just cites us and we have to go to court over these issues.

We don't feel that's fair. There are documents that MSHA has where we, you know, all guarding and all these issues are to prevent accidents. But they do have one document where they say that we have to prevent intentional acts. To prevent themselves from being hurt. We don't feel that we're in the business to prevent intentional acts. I mean, how can you do that?

You know, if somebody wants to get hurt it's going to happen. No matter how many safeguards you put in. And they can climb over things. They can take things off. They can jump off a hundred foot high wall. You can't prevent intentional acts. We feel we do a very good job of preventing the accidents that aren't intentional.

We had issues with fall protection. Injuries can happen any time. But there are no guidelines as to where you start this protection. And we've had inspectors say well we've seen people fall two feet and break their back and die. We have inspectors that make us put fall protection on a flatbed trailer when we're unloading carts.

Now there's no means there to put any fall protection on in the first place. Other than at your feet. Which is, you know, you're about five feet off the ground so you put a six foot lanyard guard and you tighten the thing. If you fall off your rope's not going to do you good anyway. But if you're up there they'll write you a danger citation which goes beyond the normal citation process. We get assessed up to fifty-five thousand dollars.

There are these inconsistencies in things that go on, go beyond reasonableness that create animosity in our industry. The workers think a lot of this is just nuts. They feel they're safe. You know, being on this flatbed around parts, you know. But you tell them well you have to tie off. You have to, you know, well then tie off to what?

Now you've created a hazard by the rope being at your feet.

We're going through hearing problems right now. We've got a contractor that got shut down recently because he brought his equipment and most of his work is in the OSHA environment. OSHA construction really mirrors our industry. In the tasks that are performed, in the equipment that is there. And more so than general industry. More so than underground mining.

We use net loaders. We're using trucks. Shovels, hammers. It's very similar to what OSHA construction is. And hearing protection we're allowed to take a reduction for wearing earmuffs, for wearing earplugs in the noise regions. MSHA does not allow us to use a reduction for hearing protection. If you're body is exposed to many decibels you're going to get a citation. Whether you have earplugs in or not.

We feel that this is not fair. We should be allowed some mitigation in work and in protection. We do not want people to lose their hearing. We provide hearing protection, train them how to use them. This particular contractor came on and his; because his equipment doesn't have cabs, it's bulldozers and scrapers, with hearing protection in any of his OSHA facilities he works in he's in compliance. He comes to our property, he's no longer in compliance.

A truck driver can come in and get loaded up at a lot of mom and

pops, a lot of trucks from the counties come in with a dump truck and they get a load of rock. They climb up on the side of it to sweep the rock off so when they go out on the road they don't create a hazard there. We get fined. Because this guy's climbed up on his truck on our property. Our option is to tell him to go out on the county road and do it out there. Where MSHA has no jurisdiction.

Again, we don't feel these are fair. And under OSHA there are handrails up there. A guy can climb up, he can sweep his spill plates off. He can sweep off his tailgate. But he can't do that on our property. My operator is fined for that.

Unfortunately, under both OSHA and MSHA the worker has no responsibility to perform. We train, we document and as soon as an employee breaks a rule, breaks a violation, we get out there and we get the fines for that.

CHAIR ABLAN: Thank you very much. Any questions?

MS. MCDONALD: How many employees do you have?

MR. BABENHAUSEN: We have approximately three hundred and fifty employees. Some sites have one or two, some have up to maybe three dozen.

MS. MCDONALD: Would it make a difference if OSHA was your oversight agency rather than MSHA?

MR. BABENHAUSEN: Well, if MSHA does understand our business; I don't know that OSHA does. A lot of the tasks obviously mirror the OSHA construction. And there is some leeway for hearing protection, for fall protection. Almost all of the OSHA standards are much more specific. I mean you can read a standard and it tells you exactly what you have to do.

MSHA has a lot of standards that are very, very vague. And in the seminar that we went to with they say that is to allow flexibility. No, that's to allow (interposing)

(CROSS TALKING)

To be able to put in new technology. Well what we did with that new technology was to provide it with gates and padlock everything. They put locks in so that you can't even get into an enclosure. That's the latest and greatest. But yet no, you can't do that. You've got to take that off and you've got to hang cumbersome guards and stuff.

There are a lot of things that just don't make an sense, in my opinion.

MS. MCDONALD: Isn't it possible working through your trade association to come up with a list of where agency regulations conflict with each other? So we'd have something to push, John? You know.

MR. GREINER: Obviously (not speaking into microphone)

MS. MCDONALD: I wish you'd work on that because that's something that we can certainly talk with the agencies about.

MR. GREINER: Yes, we told them that this Board was available.

MALE VOICE: If there are one or two things that you could do that would be in your power to do what would it be?

MR. BABENHAUSEN: Well I think that one of the things would be, that other members to have spoken, is to allow the inspectors some latitude in writing the citations. When there are problems let's talk about it. Not write monetary citations. Even OSHA has the flexibility to write the minimum citations. And not issue a fine out of that. MSHA does not have that flexibility. They are inspired to write citations and each citation is going to be a minimum of fifty-five dollars. Minimum.

And it then goes up to fifty-five thousand dollars. They used to do that when a lot of the old inspectors who have retired used to come out and they would make recommendations. You know, fix this, you know, do this. And before I leave the property if you say you've done it you're not going to get cited. We feel that those people are the ones that do work with us, you know that.

That's partnering. We have no problems with a certain set of eyes coming on the property and pointing things out. They are required

by the Act to come out twice a year to our facilities. So unlike OSHA, which a lot of facilities have never seen them, we see these guys twice a year. And it becomes more frustrating when after three, four, five years, ten, twenty inspections, things aren't cited. Then all of a sudden a new guy comes in and he writes some citations. Now they're not good enough for him.

So I would talk about flexibility. I think the other thing is that more of the MSHA standards, they've tried to recreate the rules. And why don't they follow more what OSHA has come up with. There's already an existing standard there, you know, in our fall protection, in our hearing protection. These things already exist.

And they have better criteria for us to work under. And they make a little more sense. OSHA tends to go more on cooperation that'll use recommendations. MSHA doesn't always do that. They raise their standard and they don't care what anybody else is doing. It's kind of unusual that in our industry fatalities are down to record lows. I believe in 1999 we had fifty-one fatalities.

One is too many. But as fatalities go down the citations and the money that we're spending on the citations are going up dramatically.

MR. RIBBLE: Well how do you answer the argument then from the Agency that would say see, what we're doing works? I mean, that's

what they're doing to tell you. And how do you answer that?

MR. BABENHAUSEN: Well we don't see it. We police ourselves. You know we're not in business to hurt people. It's morally and ethically wrong. It costs money. Some people get hurt and go to work comp systems. We think that the same benefit that we achieved with partners was not writing the monetary rules. Because most of the citations that MSHA writes don't have anything to do with people that are apt to get hurt.

CHAIR ABLAN: I'm going to have to cut you off. We have others who would like to testify.

MALE VOICE: I would also like to thank you for the opportunity to talk to the Board. I didn't know you guys existed until yesterday. I had to rush to try to get down here. Take a break from work.

CHAIR ABLAN: Thank you. What's your name?

MR. ECHBERG: My name is Dean Echberg. I own Echberg Material. I have three employees and one quarry. I just wanted to make a couple of points. In my opinion they're out of control. I've had a definite increase since 1997. In non-S&S and S&S violations. I have to report we've had no accidents, no lost time at all. In the six years of existence.

And also there is an inconsistency. In 1997 I had eight annual

inspections. Different inspector each time. And I questioned each, starting with the second one. And I question them each time. They say well, you know, it's a different guy. We didn't know the other guys came for the annual inspections in 1997. And it takes my time, it takes my other two guys it takes away from their time.

We're basically shut down the whole day, traipsing around with this guy. Looking at tail pulleys and back up alarms and what have you. And I just second pretty much what you guys were saying that it's inconsistent. And if there could be a system; I know when I started in 1993, the guys, and obviously I don't want to get any one in trouble, but have a warning type system where they would say you need to get this fixed up a little better. And they don't do that anymore.

It's just like when they come in it's a violation, it's a fine. And I noticed in 1997 that the violations I got were not S&S. Now they're just starting to say well I saw it in the past and you had a tail pulley problem before. We're issuing you an S&S. We're going to give you that upper level. No warnings, no nonsense, just S&S violations.

And I've had to deal with the inconsistency as a small producer. It seems like I've seen instances and heard about instances where there's even deaths of maybe a large producer. And maybe they get fined a thousand dollars. And then I get fined eight hundred

dollars; one time I got fined eight hundred dollars for just small stuff. Like I said, no assets, no lost time, but I get fined almost as much as larger producer. Why the inconsistency there?

And I don't have; I don't know who I can go to; and again, I should probably remember you guys. But I'm just a mom and pop thing. And I don't know who I can go to. And I guess maybe after this forum; I think this is great. And that you guys came to Rockford is tremendous. And to hear what we have to say.

I have two other quick points. It regards the EPA, I'm currently going through an audit right now with the EPA. I'm zoned agricultural and I've got some, you know, from time to time I'll trim some branches off or I'll burn some paper to reduce my garbage ...

... as a mom and pop this is my first time hearing about a National Ombudsman and this Board. And I'd like to know how I can, as a mom and pop, how I can, you know, have more influence with maybe getting my fines reduced a little. But the other thing is I'm going through an IRS audit. And I've never had an audit before. Never had any questions or anything.

I've lost money five years in a row. So a guy from Rockford, the agent here in Rockford, he said well they lost money five years in a row so that's a red flag. And I told the guy in Rockford, I said, I'm struggling to survive with a mom and pop operation here.

Too much Government regulation. I'm trying to make it. That's half the reason why I didn't make a profit for a fifth year in a row. It's because of all the regulation.

And he said well yeah that's probably true. I just thank you guys for coming and hearing us small businesses, small companies.

CHAIR ABLAN: Thank you. You're the kind of people we're trying to help.

MR. CLEMENSON: I have a question. Do you have any idea what's driving this?

MR. ECHBERG: I don't know. There's this; you guys mentioned too about the Peru office. There's someone out of control in this Peru office. I don't know (unintelligible). as far as the EPA, I know someone mentioned it earlier, that account of this midnight plan, maybe there's some stuff coming down. I don't know. You know, maybe there's some last minute stuff they're trying to push through.

And try to really clamp down on us terrible offenders. And that's all I can think of that might be last minute stuff. And then I don't know. You know, I feel that if people could contact regulators and push buttons. That's my personal opinion too. And, you know, somebody that has more influence than a mom and pop, maybe they'll press some buttons.

CHAIR ABLAN: Thank you. Anyone else want to testify?

CHAIR ABLAN: We'd like; is there anyone else who wants to testify before we break? We'd like to take a five minute break. And then when we come back we'll have the Government's side. Thank you all for testifying.

(Whereupon a five minute break was taken)

CHAIR ABLAN: What I would like to do in this second half is first have Gail open it up. She didn't have a chance to welcome you all this morning. And then ask members of the Government side to testify. Hopefully you'll submit your testimony and make a few remarks and then we can open it up to questions so that we can move along. I know you were told that you would have twenty minutes but a lot of the small businesses want to hear what you have to say. They'll want to ask you some questions and they still have their businesses to run. So I'd appreciate as much brevity in your testimonies as possible. Gail?

MS. MCDONALD: Thank you. Forgive me for being late this morning. I seem to have had a transportation disaster. I came from the transportation industry so this is probably something I've deserved for a long time. But nonetheless I apologize for being late. This is my ninth hearing. This program has hearings all over the country. And we use the ten SBA regions. And our SBA district offices work with us to set these up and to publicize

them. It's a partnership we have.

And as you've heard this program is a young program. This is our fourth round of hearings. So there's a lot of work to do in letting small business owners know about their rights to regulatory fairness and in developing a good working relationship with agencies so that we can improve the conditions that SBREFA has addressed so eloquently.

It's been a special privilege because SBREFA passed unanimously. It had support. It was a bipartisan bill. It had support in both Houses and in the Administration. So it's a good program to work with. We have a lot of support. But at the same time there is a lot of work to be done and a lot of fleshing out.

And I'm particularly grateful for our DD, who is here today. Judith, did you get to say a few words earlier before I came?

CHAIR ABLAN: Yes, she did.

MS. MCDONALD: Well great. Well thank you for being with us and thank you for the organizational work. As I say although our program is an independent program in the sense that we are here to help small business people in their relationships with all Government agencies, the program was placed in SBA because they thought SBA had the best mechanism for outreach to the small business community.

And the agency supports us heavily. Our Administrator, Aida Alvarez, works with us in many ways to try to help both publicize the program and to leverage our limited resources into larger ones. I'm also very grateful to the real richness of this program and the genius is the local Regfair Board members. And we have a whole Board here today. And we even have Scott George from Region VII here with us.

The work these volunteer do as small business owners and leaders is quite remarkable. And they indeed help one another. And their enthusiasm for the program is contagious. So as I say, I think it's a really fine Government program that involves small business people in all parts of it. And so I'm very proud of it.

I thank you for coming and participating today. This is an excellent hearing in a beautiful setting, which I fear is going to be blown away, ha, ha, in the storm that has come up. But this is certainly a wonderful place to have this hearing and I'm grateful to Congressman Manzullo's office for the work they did in helping us set up the hearing.

With that, I do want to start out; well then we should start with Bob Friend, Deputy Administrator of Mine, Safety and Health Administration, within the Department of Labor.

MR. FRIEND: First of all I'd like to thank John and the Board for this opportunity. And to Ms. June Robinson in the Department of

Labor Small Business Programs Office for inviting the Health Administration to this hearing. The Secretary of Labor asked me to attend. As a past Regional Ombudsman for MSHA in the Rocky Mountain District area I have discovered early on that these hearings are beneficial. And promote working relationships between small businesses and the agency I represent.

For those in attendance today who may not know a great deal about MSHA let me take a minute to say a few words now about who we are and what we do. The Federal Mine, Safety and Health Act of 1977 charges MSHA with the responsibility of enforcing health and safety standards at all of our nation's mines. The Mine Act requires that each underground receive four regular inspections per year. And each surface operation is inspected twice a year.

The legislative history of the Mine Act makes it clear that Congress intended to design an enforcement strategy which encourages mine operators to establish and maintain pro-active safety and health programs. There are more than eleven thousand metal and non-metal mines in the country. Employing possibly two hundred and twenty-five thousand miners working three hundred and eighty-five million hours to provide raw materials for infrastructure, houses, cars and almost every manufactured article.

Additionally, we have a coal mining sector. Of course coal is used to produce more than fifty percent of the nation's

electricity. Although the Mine Act does not exempt small mines in structuring its regulatory and enforcement program, MSHA pays special attention to the needs and concerns of small businesses. For example, the criteria for determining penalty amounts is established in 30 Code of Federal Regulations, Part 100.

Mine size is included in the regulations to ensure that consideration is given to small mine operators. MSHA also provides several avenues which mine operators can pursue if they disagree with citations they're issued. One is a close up conference with the inspector immediately at the end of the inspections. Secondly, they can ask for a health and safety conference with the district manager, or his designee. And if still unresolved a hearing before the Federal Mine Review Commission can be requested.

And finally, if the decision is still not settled they can take it to the Circuit Court. While MSHA is mandated by the Mine Act to issue citations for every violation observed, I think it's important to note that approximately thirty to thirty-seven percent of the regular inspections in any given year result in no citations being issued.

Many of these citation-free inspections occur and most of them are small miners. Those mine operators are proud of their excellent safety record and we too are encouraged with the mine operators ability to attain exemplary safety records. MSHA's goal is to

provide fair and consistent enforcement of the Mine Act and the mandatory standards.

With about three hundred and twenty-five inspectors for eleven thousand mines we realize that occasionally complaints develop regarding inconsistencies among inspectors. In order to minimize those differences new inspectors are given extensive formal training at the National Safety Academy in Bedford, West Virginia. They also receive thorough on the job training by journeyman instructors as well as through supervisors. And these inspectors receive training on continuing basis.

MSHA's outreach program for small businesses is a high priority with MSHA. For example, we have a compliance assistance visit program that allows a new operator to request an inspection of their plant before they start up. No citations issued. Or if they've been out of business or reopening their mine we offer the same compliance assistance visit.

The Agency has conducted numerous seminars across the country to inform and assist operators in complying with the new regulations. Specifically, Part 46, the training regulations, and Part 62, on noise. I think it is unprecedented, the cooperation that we received in promulgating these new training regulations. The National Stone Association as well as some of the important Cement Associations, Labor and MSHA got together when we started with this Part 46.

And was everybody pleased with the final rules, with everything? I don't think so. But I think they were all saying it's a regulation you could live with. More importantly, it's a regulation our miners could live with. MSHA's Educational Field Services Group, newly formed in recent years, is available to assist mine operators with any training that they might need. These training professionals are not enforcement and they do not possess authorized representative credentials.

Our inspectors have spent numerous hours helping operators. We have a technical support group that is also available to the operators who may need assistance with technical solutions. Each of our six districts conducts seminars every year in most of the States across this country. To promote health and safety. Unfortunately, most of the vast majority of small operators do not attend these meetings.

As always, we have an open door policy. And you can send your email with questions without fear of any inspections. We at MSHA are really proud of our website. Some of the information on the homepage includes photographs, a sketch and a short narrative, and recommendations to prevent further occurrences. Our accident reports are on the website. And all of our regulations and our policies by which we interpret those regulations are on the website. Also we have statistics related to accidents for the past two years. Something that's new are we have easy and economical

ways for getting access. Tech support is developed along with the enforcement group. And two examples off of that is extra strength glass. They go across the bridge with material and they fall down and they draw a point. The material doesn't go through the glass.

Another one, another example is we've had a couple of fatalities recently where a mechanic was run over by a truck operator. He thought he was finished. We had a supervisor who was run over by a front end loader when all he did was go to his truck to get a flashlight. And the operator thought he was finished. Now the quick and easy solution to that is similar to our lock down program for electrical and they just take the keys.

The mechanic had taken the keys. The foreman had taken the keys. Then when he is finished he gives it back to the equipment operator. Doesn't cost anything. Those are the kinds of programs that we're trying to get out. I also have what's new at MSHA on that. Hopefully that doesn't change to often.

And our email address is MSHA.gov for anyone who would like to visit. We have reporting capabilities, electronically through that system where operators don't have to go through the deal of hand signing their quarterly reports each quarter. They can do it online. They can change their legal identify online. So many of the things that we're doing we're doing for outreach.

That I guess in capsule form is some of what we do, some of what

are about. And any question?

CHAIR ABLAN: Yes, I would like to ask a question. Could you respond to some of the questions today? Or one in particular, my concern is Peru, Illinois. They say there seems to be a problem with Peru, Illinois inspections.

MR. FRIEND: That came to my attention as a result of the RegFair meeting, I guess in Des Moines, Iowa. And unfortunately we changed district managers during that period. And we practically didn't have a representative there. As I said, I've attended the meetings in Rocky Mountain area and specifically Salt Lake City and Kansas City, Missouri.

In the future we plan to have folks there to at least listen and try to answer any questions they have. That's the first time that the Peru problem came up to me, is at that meeting.

CHAIR ABLAN: Well you could tell the people were very trepidacious about even mentioning the plant because they're afraid of repercussions.

MR. FRIEND: Yes.

CHAIR ABLAN: What protection can you put in place so these people won't have repercussions because of what they said today?

MR. FRIEND: I don't know of any reprisals that we'd take. Take any agency that has three hundred and twenty-five inspectors, and

occasionally you'll have one or two that go away from the fold, so to speak.

But as I was telling John at the break I would have liked to have had the opportunity to have known that. Even prior to the Des Moines.

CHAIR ABLAN: Do you have the personal email address that they can use?

MR. FRIEND: Yes, I do. It's rmfriend@msha.gov. Those are the kinds of things that we would like to know right away.

CHAIR ABLAN: I have another question. You say you have a compliance assistance program for when a plant opens. Why couldn't you do that on an annual basis so that there wouldn't be fine about something like that?

MR. FRIEND: The Mine Act doesn't allow for that. The Mine Act mandates that we do two regular inspections and cite violations for each plant.

CHAIR ABLAN: So are you saying we need to get the law changed? The law needs to be changed?

MR. FRIEND: I don't know that it needs to be changed. I've sat on both sides coming from the aggregate industry in Kentucky. I've been on the receiving end and I've been on the issuing end. And back in 1978, or prior to that, there wasn't much of an

incentive for our brokers to comply. I mean all we did was issue notices and MSHA issued notices at that time.

And invariably when we go back from time to time and issue citations for the same guard on the same piece of equipment for not being on. And the intent for the fines, although they're minimal, is to gain compliance. And protect our nations mines.

MR. HEXTER: Excuse me, minimal fines in whose eyes?

MR. FRIEND: Well it's fifty-five dollars for sixty or seventy percent of the citations we issue. I've heard the number fifty-five thousand mentioned. That is the maximum for the most egregious type of high negligence violation. And (interposing)

MR. HEXTER: Well, except that we heard that the definition, if it didn't fall in one category it became negligence. I know in others, not necessarily mine safety, we have heard in these hearings where the rules are clearly established at the plant and the employees are in violation of those rules. And the fines are still levied against the employer.

I mean, you're nodding yes and I know that you're not in a position to go change that process sitting here. But where is the fairness issue when, and that is our middle name, when we come down to enforcing the regulations? You can say that the Mine Safety Act only allows you, it commands you, to visit twice a year. But does it command you to then suck up their resources or

does it command you to make a safe work place?

MR. FRIEND: In my eyes there's a strict liability there. The violations that may or may not be caused by an employee is imputed to the operator.

MR. HEXTER: And that was the intent of Congress as you read this?

MR. FRIEND: And it goes to the negligence. And that's based on the, you know, inspector who's there to determine what negligence he attributes to each of those violations.

MR. HEXTER: Is that inspector required under mine safety rules to go visit the main office of the plant before he goes on site?

MR. FRIEND: No.

MR. HEXTER: He's not.

MR. FRIEND: No.

MR. HEXTER: So somebody's right, God has the only that has a greater authority.

MR. FRIEND: Well, let me back up. There's usually an office at each mine site. The inspector, if he waited on somebody to come from a corporate office he may have to be there two or three days twiddling his thumbs, because some corporate offices are out of state.

MR. HEXTER: Well maybe we ought to send them a notice that says we're going be on site on this date.

MR. HEXTER: Then the law has to be changed, doesn't it?

MR. FRIEND: No. We cannot tell an operator when we're coming.

MR. HEXTER: But it's; okay, that's a gotcha mentality. But it is in fact legal for you, based on the Act, to go onto private property without escort.

CHAIR ABLAN: From the ownership.

MR. FRIEND: Legally, I would say probably yes. But it is a practice? No.

MR. HEXTER: Well that's not what I heard today. It's certainly not. I've heard that at least there was one office that was doing (interposing)

MR. FRIEND: One office out of eleven thousand. For mines.

MR. HEXTER: Well that's the only office we're concerned about. We're in this region.

MR. FRIEND: But I'm saying it's not an epidemic.

MR. HEXTER: If that makes you feel better.

MR. FRIEND: We do have one or two people scattered around. It's

like any group that has as many inspectors as we do. I like to think that we take care the problems once we know of them.

CHAIR ABLAN: Well when you have three hundred and twenty-five inspectors for eleven thousand mines, and one person gets eight visits, that's an awful lot for one person.

MR. FRIEND: Yes, and I don't understand that at all. I would like to know more about this. I'm sure that we don't have the resources to do things like that. In fact, we're into about eighty percent of our mandated inspections.

CHAIR ABLAN: That's because they're doing one guy eight times.

MR. MAGGETT: I just had a question that you were saying that once an inspector goes out he does not have any leeway in terms of a grace period. He shall or he must issue a fine or some kind of violation. There's no grace period.

MR. FRIEND: That is correct.

CHAIR ABLAN: But isn't that; doesn't that conflict with the President's Executive Order that allows agencies to provide waivers to small business people. The 1995 memorandum of penalty waiver.

MR. FRIEND: And we do have every use for that. Like I said in the penalty process one of the criteria is the size of the operation. In setting the penalty. Even after that if an

operator contacted the National Office of the Assessments Office and said I just don't have the money, I mean things could be worked out at that level. Not only for him but I'm just saying we try to make it easier on the small businesses.

MS. MCDONALD: So you do comply with SBREFA and with the President's Executive Order?

MR. FRIEND: We do as far as we can.

MR. RIBBLE: I know you've got extensive training and thorough on the job training. Does that training include having their inspectors inform the operators that they're inspecting of their rights under SBREFA?

MR. FRIEND: We had a small statement they were supposed to hand out during the close out of the inspection. We found out a year or so ago that that wasn't working. So we had it printed on the bottom of our citation forms and started that this Spring.

MR. RIBBLE: It might be better to do that when you enter the property.

CHAIR ABLAN: Couldn't you give them this form when the inspector shows up, that they have a right?

MR. FRIEND: Yes. Yes, we did that.

CHAIR ABLAN: You did; can you or did you?

MR. FRIEND: Yes, we can. Of course I know we didn't.

CHAIR ABLAN: Yes, well under the law you can. So that when the inspector shows up it's basically the Miranda for small business inspector. That's what I call it anyway. That when the inspector shows up at your site the owner, or whoever's there supervising, gets a copy of this so they know what their rights are before the inspector does a thing. Is that possible that your agency could do that?

MR. FRIEND: We certainly can.

CHAIR ABLAN: Okay, thank you. Does anyone from the floor have a question? Yes.

MR. HENRIKSEN: My name is John Henriksen. I run the Illinois Association of Aggregate Producers here in Illinois. I have a question regarding the compliance assistance visits. It's my understanding that some years back it used to be customary for the compliance assistance visit to occur different quarries before we start up every year.

And basically that gave us an opportunity to if an inspector came on board and saw maybe guarding that wasn't right or electrical were not right or whatever the problem was that while the machines weren't running, before we started production, that was a real nice process MSHA did routinely that we thought was real helpful.

Because we could get our places squared away before we start producing rock. And when the official inspectors you're talking to, that you've got to do twice a year, when that occurred well then it was more likely that everything would be in order. No violations. Is it possible to bring those back annually?

MR. FRIEND: John, we certainly would like to do that to the fullest extent possible. In years past we had considerably more inspectors. Twice as many. And for various reasons we're down to about three hundred and twenty-five. We don't have the luxury anymore of doing what you're suggesting. What we do like to do is for those people who have never mined, don't know about MSHA, or reopening a mine or bought an old mine, whatever, we certainly like to get those people.

We have so many intermittent operations throughout the country, not just in this region, that are intermittent, if they all asked us for a CAV we would overwhelmed. So we no longer have the luxury of doing it for as many as we once did.

CHAIR ABLAN: Any other questions?

MR. CLEMENSON: It appears that, from what the people were talking earlier this morning, that it seems to be that there's poor respect between the inspector and the mine owner or operator. And I think that in my opinion all the years I've been in business, if I respect you, you respect me and we get along a lot better. And

things work. Does that trickle down from your area to the top, from the top down to these people, that, you know, we're on equal footing here, let's respect each other?

MR. FRIEND: Absolutely. In fact, we reinforce that at basically. Every meeting we have we have to talk about professionalism. We can still do our jobs. But we need to treat each other with respect. So that is at the top of our list when we have a managers meeting. And that does trickle down. Things also trickle up. And we will be looking into that.

CHAIR ABLAN: Gail, did you have a question?

MS. MCDONALD: I was curious to know what would it cost a small business to bring something before the Federal Mines Review Commission? That's an appeal process I take it?

MR. FRIEND: Yes, it is. The small business asks for a conference with the district manager. After that, if they still don't agree they can ask the Federal Commission to have a hearing. And we will come to their location. They do not have to have an attorney. Certainly they can have one if they would like to at those hearings. So basically it doesn't cost very much at all.

MS. MCDONALD: And can the ALJ overturn the fine if he deems that it was unfair or excessive?

MR. FRIEND: Yes. Yes.

CHAIR ABLAN: And how long does that process take? I mean if I was an operator and wanted to get through this process and you have me shut down?

MR. FRIEND: Probably three or four or five months.

CHAIR ABLAN: I'd be out of business.

MR. CLEMENSON: There appears to be, from testimony earlier, that there seems to be a concentration in the last two, three years, if I heard correctly, of more inspections. Is there some reason or what, does there appear to be something driving this?

MR. FRIEND: More inspections?

MR. CLEMENSON: That's what I'm hearing.

CHAIR ABLAN: That's what we've heard in testimony. Region VII as well. About the Peru Office.

MR. FRIEND: There's probably more citations, not inspections.

CHAIR ABLAN: More inspections and citations.

MR. FRIEND: You'll get fewer inspections this year than you got last year.

CHAIR ABLAN: Because?

MR. HEXTER: Staffing budget.

MR. FRIEND: I think I heard some of the speakers say more

citations. And certainly that's not coming from headquarters. I don't think it's coming from each district either. The Mine Act is very clear. We're supposed to cite every violation we observe. And that's the directions that we have to take.

MR. CLEMENSON: Do these inspectors, do you know if they have quotas? Do they have quotas they have to meet?

MR. FRIEND: No.

MR. CLEMENSON: How are they judged for what they do?

MR. FRIEND: Quality.

MR. CLEMENSON: And can I ask how that's done?

MR. FRIEND: Certainly.

MR. CLEMENSON: How do you determine what quality they do, your inspectors? Is there some criteria?

MR. FRIEND: Supervisors rate the inspectors within their office. And that's based on the quality of the report that he reviews and he does review these reports. It's based on feedback from industry folks. He takes that into consideration. Just basically the work product. And he's supposed to travel with each inspector a couple of times a year.

MR. CLEMENSON: So they don't have quotas. That's (interposing)

MR. FRIEND: No. We have inspectors who may gets fifty citations a year. We may have one who gets a hundred and fifty annually. Just depends on which area he's in. Not how large a mine he's inspecting.

MR. HEXTER: When the supervisor travels with the inspector does he give advance notice that he's going to travel with him?

MR. FRIEND: He may or may not. He may or may not.

MR. CLEMENSON: Now of the number of dollars that we were talking about here earlier it seems to me a ton of money that is collected in these fines. What happens to that money? I heard one here about a quarter of a million dollars and for a million. What happens to that money? Where does that money go?

MR. FRIEND: The fines that are collected as a result of citations that we issue goes into the General Fund.

CHAIR ABLAN: It goes to the Treasury?

MR. FRIEND: It goes to the General Fund of the Treasury.

MR. HEXTER: So it goes for overall operations? The money goes back into the General Fund and is that for operation of your (pause)

MR. FRIEND: I don't think it has anything whatsoever to do with that (interposing)

(CROSS TALKING)

CHAIR ABLAN: Scott?

MR. GEORGE: Mr. Friend, thanks for coming today. My name is Scott George and I am from Region VII. What I'd like for you to do today is make sure that you understand that the things you are hearing today are representative of what the Board heard in the five or six small businesses that had the courage to come testify.

In particular, and I want to talk to some of your answers too, and then I want to end with a suggestion and a question to you. First of all about the number of inspections only being two a year, what we were hearing from the people there is they were getting four and five and six inspections a year. Or getting them every few weeks.

What they were hearing out of this particular office was that there was a Monday meeting and all inspections were being assigned out for the week. And off they went. And they show up. The testimony you heard today about inspectors climbing on moving equipment and actually endangering themselves. We heard several talk about that.

Climbing up on moving equipment, which by the way is a violation of the MSHA rules. We have inspectors who do that. I've heard of several. One of the things that was brought up too about the inspections was one of the individuals who was testifying was

being inspected at that moment at one of his mines. That didn't make him feel really good.

Another one who was scheduled to come in did not come in because he was being inspected. I know how that feels. When I was in the White House Conference in 1995 the FDA inspector came while I was at the conference. I was a little nervous there. Two years ago I was at a Congressional Small Business Summit and OSHA walked in. And inspected.

I want to reiterate a point I heard in some of the testimony too about the employees losing respect for safety. We heard several people testify to that effect. Because of the arbitrary and capricious nature of the citations we heard a number of people talk about the employees losing respect for safety. And then these huge wave of citations came in.

One individual said that; and I think someone here talked about, an inspector came and said put that guard rail up there. This is how I think you need to do it. And the next inspector who came in and inspected three weeks later cited him for that guard rail. I mean this is the kind of stuff that was coming in out of these other citations.

The fines being minimal, I have a little problem with that. Part of the problem is the fifty-five dollar fine. If you get a half a dozen of those that's money that's off the bottom line.

Particularly for things that were okay in the last inspection. There's one individual who sent me a letter, an email, and for a half dozen citations that were fifty-five dollars apiece it cost him over two hundred thousand lost production. He's had to shut down. And over thirty thousand in labor.

I'm sorry, your fifty-five dollar fines are pretty minimal compared to two hundred thousand lost production and thirty thousand in labor. You know, that, and then in the case of production, you don't get it back. It's gone. It's gone forever. It went to somebody else because they needed that aggregate and they got it.

So this is from the Region VII here. And I'm doing this from recollection because I don't have the testimony. Now my suggestion. Since you're from the Rocky Mountain area you may be aware of this. I hate to kudo to OSHA, particularly with their history. But I'm going to give them two. And it's a good practice that MSHA might want to consider.

The first example's from Kansas, the oil and gas industry was having two to three deaths a year. Fatalities. OSHA sat down with the association and worked out safe working practices in the industry. And the companies, the association and the companies, trained all their workers. And then went from two to three deaths a year to a twenty-two months between; before the next fatality. And that was somebody who was not a member of the association and

did not receive training.

So what they did is they sat down and worked together and developed safe working practices. In Denver, second example I'll use, is the Denver construction industry. One of the biggest problems is falls in the construction industry. One of the other problems we have in the construction industry is a lot of your workers are not the most literate individuals on Earth.

The guy who built my house, my name's Scott, he never spelled my name twice the same way in a row. You know, but he built a heck of a house. And what they did is they basically came up with a picture book, you could almost call it a comic book. Of a way to be safe and protect yourself from falls and put that into the Denver. I dare say that the Iowa and Illinois associations would be delighted to sit down with MSHA and develop safe working practices.

So that they could put them through all of their mine operations. And instead of trying to figure it out citation by citation what we ought be doing, and they probably would be delighted to sit down with you and come up with what should we be doing and they can put that out to their people. Does that make sense? That's my question. Does that make sense?

You're required to do two inspections a year. But nobody's stopped you from doing more. It would be a service to these

people. One last point and then I'm through. When I got back up from Southwest Missouri, and after the Des Moines hearing, I talked to people and I said have you had a big change in citations in the last three or four years? Oh no, things are working fine.

So we've got a local problem. Thank you.

MR. FRIEND: Thank you for the comments. And frankly I wish I had been at that meeting in Des Moines. Or maybe not.

CHAIR ABLAN: Probably not.

MR. FRIEND: But to answer one of your comments about safe work practices. We do have many of those already out on the books. And they all derive from our Academy. We use them. As far as I know they targeted fall protection for example, in the construction industry. What you were talking about. And the two or three deaths in the oil and gas industry.

We do the same thing. Unfortunately most of the time it's reactive instead of proactive. And we're working on that. But we have a multitude of literature and on the job training safe work practices for many, many, many job applications. And they are available.

Another thing we do is each year usually, we didn't have the resources this year of 2000, but we'll take a week or two and do nothing but visit our smaller operations and discuss the leading

causes of fatalities, through the most recent years. So we're doing that.

And we try to talk with as many miners as can talk to. And the mine operators have been most receptive on those kind of programs. And we do those year in and year out. One year we did abandoned quarries. And it's a real problem, particularly even in this area, this region. By the young people or whatever going to do thing and drowning, et cetera.

So we are trying to be proactive. Certainly we're reaching out to the industry, and in particular the small businesses. Because they usually don't attend our meetings. As I said earlier, we will hold meetings and we'll invite everybody. Everyone who has an ID number with us. And year in and year out the ones who show up are the association members. The bigger companies. And they turn out. But yet the people that we would like to be there don't come.

CHAIR ABLAN: Bob, thank you very much. We appreciate you being on the hot seat, ha, ha. But hopefully it'll be a positive results from all of this. Thank you. Kevin Jones? Kevin's from the U.S. Department of Justice.

MR. JONES: Good afternoon, I'm happy to be here today on behalf of the Department of Justice. We're not one of the regulatory agencies but we do have several programs of interest to small

businesses. So we took the opportunity of this hearing to prepare, I hope, a pretty comprehensive statement of the kinds of programs that the Department of Justice is engaged in.

So I'd like to take a couple of minutes just to describe the range of programs and then focus attention on some of the immigration related matters that have been brought up. I think other small business forums in the past were more focused on the employment verification program, in particular. That seemed to be of the greatest concern to small business.

The Immigration Service has a great deal of responsibilities both on the enforcement side and on the legal status of immigrants. I think some people, just to give context to non-immigrant visas the United States in programs such as the student, tourist, business executives, and temporary cultural workers. Whereas the immigrant, or someone who's coming in with the status, immigrant status, will be a permanent resident alien a so-called green card permanent resident.

They have very different status in the United States. The Immigration Service is put in terms of people who want to seek particular status or various categories becoming a permanent resident. On the enforcement side we have border patrol inspections, airports checks, and very active document fraud initiatives.

But the Drug Enforcement Administration, of course that's the criminal enforcement side, it also administers the laws with respect to poison control for controlled substances and certain other chemicals that manufacturers produce. These are medicines, chemicals that can be used for various purposes that of lawful origin but the DEA has a program to prevent abuse by hospitals, manufacturers, doctors and various manufacturers of chemical substances.

The chemical side the program is focused on transactions that are in excess of particular thresholds for a particular substance. It may be that many traditional typical transactions are not regulated but only file a report.

The Civil Rights Division has a couple of programs. One of which ties in with or compliments, I guess, to prevent discrimination against people who are properly authorized to work in the United States just because they may look or sound foreign or because people don't accept their documents.

The Civil Rights Division also administers provisions with reference to comprehensive civil rights assessment dealing with programs against disabilities. In particular the Civil Rights Division is in charge of provisions dealing with Government facilities and public accommodations in business facilities. While the EEOC has jurisdiction with respect to employment issues and public transportation or transportation issues.

The Justice Department investigation also has three programs that I'll mention very quickly. One is the communications assistance for law enforcement, or CALEA, which is a requirement for telecommunication to make sure that even with all the new technologies that have developed that facilities will still be available to provide for court ordered intercepts.

The FBI also has an instant criminal background check system since 1994. Under the Brady Act gun selling licensees contact us by telephone for criminal background checks. In the first thirteen months of operations through the end of 1999 the system handled about ten million inquiries, approximately seventy-two percent received information.

And the third is something that the FBI is still in the process of developing, a national stolen passenger motor vehicle information system to verify the VIN numbers of stolen vehicles and stolen vehicle parts to determine if they've been reported stolen.

I'll also mention briefly a couple of non-regulatory programs that are of interest to small business. One, Federal Prison Industries has a program using prison facilities that in many cases have partnerships with other local companies to provide materials. And FPI has an ombudsman to deal with issues as they come up.

The United States Trustees are responsible for supervision of the bankruptcy process. And they not only supervise the trustees, the

private trustees themselves, but they maintain the integrity of the process on behalf of the people in the bankruptcy system. Many individual offices also provide assistance to individual companies that might have found themselves in trouble because of unfavorable management and oversight processes .

With respect to the Immigration Service in particular the INS is in the process of reorganization which would separate out its law enforcement functions on the one side as opposed to customer service functions on the other. Each function will be interrelated because they use the same data systems and things like that. But operationally, as far as supervision and goals, etceteras, they would be separated out. I think that would be great improvement, particular in the customer service side.

Many of the issues that are being raised with respect to small business are related to the employment verification process. In response to public requests and the comments that were made earlier, employers are not required to determine whether or not the alien is unlawful. What they are required to do is to ask for documents that verify the form and fill out the documents.

The process applies equally to all hires. All new hires, regardless of the person's citizenship. And that would be the best way to carry out the process is to apply it equally to everyone that comes in. The employee has to present documents that are listed. Either a so-called List A document which

identifies the employee and makes an indication that shows both who you are and the fact that you are a citizen.

A so-called green card also would show that the resident alien has work authorization. On the other hand, the employee is also requested to fill a list document which goes only to the person's identity such as a driver's license. And together with a List C document, which deals with their work authorization like a social security card or other things that show this person is authorized to work.

Again, the choice of the particular document is up to the individual. The employer's obligation is to make sure that the person has shown them documents that support the form and fills out the form. The employer is not required to make judgments as to who this person is or they're required, they are required to accept documents that do appear to be genuine. And that's the obligation of the employer.

If they've done that and filled out the forms that's what the service is looking for. Of course the other requirement is that the employer cannot hire or retain an employee who are in fact known to be not work authorized. With respect to this process, the service in recent years has adopted a new work site enforcement program that was announced in 1998.

To focus and target the operational resources of the service in

their inspections in the investigations program on criminal violations and in certain areas where companies are disproportionately involved in retaining aliens that are not authorized to work.

CHAIR ABLAN: You have one minute.

MR. JONES: Thank you. The other thing we get involved in with respect to the benefit side is the ability of the employers to hire aliens, particularly nonresident aliens from outside the country, with reference to nonresident temporary workers in context to restaurants. I'm not as familiar with that and a lot more discussion has been focused on the program for specialized and skilled aliens in the high tech industries and others.

Again, the purpose of the Act is that these are temporary workers who are not to be brought in simply because they are applicable but because the employer has not been able to hire either citizens or aliens who do have work authorization. So the process of demonstrating the labor status is administered by the Department of Labor.

It's called the Labor Certification with the Labor Department that outlines whatever kind of improvement programs you've undertaken to try to find someone. And having failed to do so you can proceed with either the H2B or the H1B programs. We're sensitive to all the H1B program in particular because of Congressional

action in terms of possibly raising the cap for that.

I'll briefly mention the H2A program. It hasn't been mentioned today. But that is an example of where the Justice Department and the Department of Labor are trying to ease the process. This is for temporary agricultural workers. We published the final rule now to provide essentially for one-stop shopping so instead of having to go first to the Labor Department and then to the Immigration Service employers can file one petition. The entirety of the case will be handled almost entirely with DOL with some small involvement of the Immigration Service.

But from the employer perspective it would be a one-stop system where you only have to contact DOL for a determination without having to go see two different agencies.

CHAIR ABLAN: Thank you very much. Any questions?

MR. RIBBLE: I've got a couple of questions as it relates to INS. If an INS inspector or a regional office enters the business of anybody to look at employment records and they find something that is improper; are they required under the Act or law to explain to that business owner where the impropriety is? Or can they just say you need to release these employees?

MR. JONES: No, the process, the compliance process is code investigations because they were basically inspectors. Investigators, when they come, they will look to see if the

documents have been maintained. In some cases the fact that there aren't document will lead them to investigate whether in fact they've knowingly been hiring aliens that are not authorized to work in this country.

And there are industries that do that. In fact, there are smuggling groups that have worked with particular companies to supply labor. Now obviously that's a substantial minority of the cases. In most cases the kinds of violations and failures are paper work failures where they have not completed the forms, or only partially completed, things like that.

In that area, as I said, the compliance; the work site compliance program doesn't focus on those kinds of violations. That's not where the efforts are targeted. If they are found the compliance investigators do provide information as to what should be done. I have with me a packet of materials put out by the Office of Business Liaison in terms of how the compliance process works.

There's also rules for violations that are sensitive paperwork violations. Where the Service would provide them with notice of what the deficiencies were and allow ten days for the company to make good on those. This was announced the target of the program enacted by Congress in 1996 and so this is implementing that.

MR. RIBBLE: But would it surprise you to hear that that's not always happening in the field?

MR. JONES: No, I'm not with that so I can't speak exactly to how that works. But I certainly would like to hear of specific instances with problems like that. And take them back to the people at INS. Because that's certainly the focus. Obviously there's only limited resources. And the service has made a determined effort to focus on criminal violations, anti-smuggling, document fraud cases. And not on cases where it is simply a failure to complete all of the forms.

We've got an enumeration verification service which matches people's names and their social security numbers. And there have been issues that have come up. And things like that where the service is cognizant of issues that are of common concern to employers.

In fact I'd like to talk with the INS people about how to make better use of some of the regulatory fairness and the small business administration processes to get information into small business.

MR. JONES: And I'm concerned that the department is putting out we have to look into that.

CHAIR ABLAN: Thank you very much, Kevin. We appreciate your coming today. Is it possible that you can get them out to your inspectors and stuff? These are; your investigators? These are the other SBREFA rights that small businesses have.

MR. JONES: I'm not familiar with particular document. I will talk to the INS people about that. And they'll be glad to talk with you.

CHAIR ABLAN: Okay, great. Thank you very much. Our next speaker is Paula Choate from EEOC.

MS. CHOATE: I'm Paula Choate. I'm the Director of the Field Coordination Programs at the EEOC in Washington, D.C. And I'm responsible for implementation of the small business initiative. Last year our Chairman launched this initiative as one of the first priorities of pharmaceutical leadership at EEOC.

Today I'd like to share with you some of these facets of that initiative as well as other aspects of our operation to benefit to small business providing training and other assistance. And also meet the requirements of SBREFA. In our program we oversee the EEOC field office operations. We have fifty of our field offices around the country. However we're a fairly small agency overall.

We have about twenty-eight hundred employees. Most of these are located in our field offices. But it's the field offices that deal on a daily basis more and more with small businesses and the concerns that they share with us. We understand the critical role that small businesses play in our economy. We also share with you the common goal of ensuring that our work places are free of unlawful discrimination.

Over the past year and a half, since we implemented our small business initiative, we've made a number of improvements in our service to small business. When the Chairman first started this in October her first priority was to improve the relationship that we had with small business. And the very first commission public open meeting was much like this.

In December of 1998 small business representatives came and testified about the needs that they felt EEOC was not meeting. And some made suggestions on how these things could be improved. After that, when we implemented small business initiative we took those suggestions and recommendations into account.

And since then all of us have been fully committed to ensuring, to the extent that we can, that compliance with the laws that we enforce is done on a voluntary basis, not based on filing lawsuits and other courses of action. Because we all truly believe that prevention is the best way to have compliance with the law.

We've engaged in dialogue and feedback with the small business community since we implemented our small business initiative. Last September, at another commission meeting, the Chairwoman had representatives from small business groups around the country to come and testify. Again publicly. And they gave testimony about things that we had done that they agreed with.

And they also gave us some new ideas for additional improvements

to make. As a result of this ongoing dialogue, which we know will continue in the future because it remains one of our priorities, EEOC has taken a number of steps that I'd like make you familiar with if you don't already know about them.

We designated a staff member to be the small business liaison in each one of our field offices. The liaison is available to explain our agency process, to assist in the resolution of enforcement concerns and to provide information on how to comply with EEOC statutes. And the names of the liaisons and their total numbers are on our website. And they are identified.

Also our website is www.eeoc.gov. In case you want to reach me for something I'm pchoate@eeoc.com.

The second thing that we did was we implemented a national mediation program. It's a low cost, voluntary way for employers and charging parties to resolve any charges of discrimination that may be filed. This process happens at the front end of the charge filing process so that as an employer you would not need to file a lengthy response to an information request or position statement.

For those of you represented by an attorney all of this sort of legalistic process is put off until after the mediation process is over. That way there's a minimum of time and expense for all involved to try to resolve the issue. This mediation program has proven to be wildly successful.

We did a survey, a confidential survey, and ninety-six percent of the employers indicated that they would use the mediation program again. Even though in their particular case it might not have resolved the immediate dispute in front of them they would use the process again.

The mediation program allows the employer and the employee to resolve disputes with a neutral mediator. It's a confidential process. Oftentimes the solutions that are reached are things that would not be available in the normal EEOC case process and venue. And it allows the parties to resolve the dispute without going to intervention.

So it's a very good process. And again, I would encourage anyone in the small business arena who has a charge filed against them to take advantage of this process. About seventy percent of the charges that go into mediation are successfully resolved. So it's a very high success rate.

And the unfortunate thing, however, is that only about thirty percent of employers who are offered the option of the mediation process chose it. The charging parties is about eight percent. So we'd like to see you really take advantage of this. It's free. You don't have to be represented. It's neutral. It's confidential. You have nothing to lose.

The average mediation resolves a case within the first ninety days

after the charge is filed. Whereas the investigative process on average takes about two hundred days. So it really is important.

It's being processed right now with small business representatives for review the Congress publishes. We prepare short workshops for small businesses and their employees on understanding your rights and responsibilities at the facility on their schedule to better fit their needs. We will design a training program for you.

We conducted four hundred and fourteen outreach programs reaching more than seventeen thousand small business representatives last year. These programs included over a hundred and thirty-three technical assistance programs seminars. Which are one or two day of active programs for employers, many of whom are small businesses.

Again, we provided training for about twenty thousand employer representatives. For the coming year what we're going to do is we're going to distribute your small business REGFAIR brochure. When it was mentioned to us, I guess at the last hearing, that it would give us exposure at our fact seminars because, again they're attended probably twenty thousand each year.

We have outreach such as advisory councils where we obtain feedback with small business. The issues that have been mentioned in other cases about how to work with investigators and inspectors. This is the venue into which those kinds of things

can be made. We have a website which has certain information on it for small business. It also includes the REGFAIR rights information.

We have required all our field offices, if there is in fact an investigation in which you are charged, to tailor all the requests for information to the size of the employer. We also have on our website published the task force report on best practices. And this was done a couple of years ago. And we polled a number of visits around the country and asked them to tell us the things that they have done to comply with EEO laws that are costs effective and are preventative in nature.

And so you can look at that report which provides many things to make your business operate in compliance. I have more that I have a chance to give to you (interposing)

CHAIR ABLAN: Right.

MS. CHOATE: And I'd like to thank all of you for the opportunity to appear today. I'm open to any questions.

CHAIR ABLAN: Thank you. I appreciate your coming. I was impressed with this small business ombudsman from you. If every agency could do that we'd have a lot less problems. It's a listing of all within the country, all the small business ombudsman within the EEOC. With a phone number. I mean it's a real live person. That's wonderful. That's terrific. Any

questions?

MR. CLEMENSON; I have one. Do you keep track of any; as far as numbers of bogus claims?

MS. CHOATE: Bogus claims?

MR. CLEMENSON: Let me back up and just give you a little background. I'm just saying that if you do. My company was targeted for an EEOC claim and it went to over; it was over two years by the time we got it resolved. And we were absolved of any wrongdoing. So that's why it brings to my; this was a disgruntled employee.

MS. CHOATE: Well we recognize that as a problem. And about five or six years ago we put in place preventative procedures. That enabled us to evaluate the charge up front. If it looks like it won't result in a violation, you know a finding of discrimination, we pitch it right off the bat. If it looks like more investigation is required now we send it do mediation.

We probably can get the mediator to resolve it quickly. So to answer your question, yes we maintain statistics at the agency on the things that we do. And probably of the cases that were made in this middle category, not the ones that we pitch but the ones that; not the ones we pitch right off the bat, but the ones right in the middle, there's probably about a sixty percent dismissal rate.

Then we have another category called A charges, which are the high priority charges which possibly, we think might have merit. And then there's a much higher rate, probably thirty percent. I don't have the exact number in front of me. That has a higher rate of discrimination in (unintelligible). So yes, we do keep track of that.

It's true, most charges that are investigated and filed with us are not; do not have merit. But, we must accept any charge that someone wants to file. Filing with us is a prerequisite for going to court. So they have to get right to sue from us before they go into court.

We can't tell; in most cases we have to do some investigation.

Many times employers disagree with what we're doing and we understand that. And kind of like we can't make both sides happy. I think someone else had earlier know what's happening, maybe wouldn't have the job. I don't know. But certainly we do a new partial investigation. We look at all the evidence from both sides, from the employer's side and the employee's side.

We make our best determination of whether there's a violation. If there's no violation we dismiss it. And that takes awhile. That could take some investigation. Hopefully we do (loud whispering into microphone by other parties)

MR. CLEMENSON: Thank you.

CHAIR ABLAN: Any other questions? John. This is John Greiner, who is our regulatory view.

MR. GREINER: I just wanted to bring up some of the past issues that the Board identified. I'm glad to hear that the people are participating in the mediation program and are trying to do again.

But one of the things that we've heard is how the employers react when they get a letter about mediation. And that ties into one of our priority recommendations that agencies really; if they could take a special, you know, look see at all of their written communications and make sure that the communications aren't going out in a fashion that a small business owner might interpret it as this is a charge, you're guilty. We're suggesting you do mediation.

Because that infuriates and inflames the situation. Whereas the point of mediation is to do the exact opposite. So I just point that out. And the other recommendation, and again it was something you heard, the EEOC is certainly not limited; is sort of critical mass actually justifying us contacting an employer. Mr. Clemenson, one of our newest Board members brought that up.

And that is something that began and we ought to make sure that the employees of the agency are well trained to make sure that the quality of that complaint by an aggrieved employee is sufficient.

That they're not wasting an employer's time unnecessarily.

The other part of that was that they wanted to share with the person filing the complaint the potential ramifications for lying to a Federal Agency or filing a false complaint. Those are the three points basically.

CHAIR ABLAN: Thank you, John.

MS. CHOATE: I'd like to respond.

CHAIR ABLAN: Sure.

MS. CHOATE: Part of our small business initiative was to include a letter from our Chairwoman to small business. Whenever a charge is filed against an employer that we believe has five hundred or fewer employees; and sometimes that's hard to tell, but you know, we err on the side of including it. Instead of popping the letter out with the charge. And as I said before, the fact that a charge is filed does not mean that there's been a violation.

The new requirements are that the charge has some allegations in it about what the person's alleging to be a violation. But until there's been an investigation there is no finding. And in most cases once we do the investigation the vast majority of cases are without merit. And if they get that far. Of course we try to get the parties to resolve it so that they don't even have to go through the process of having investigation.

And the mediation process by its very nature is neutral. Our mediator does not take sides one way or the other. Do not advocate one way or the other for either side. And oftentimes the matter is resolved just in talking out the issues. And sometimes in many cases there's not even much of a monetary remedy that goes along with this.

And again, it's voluntary so if the employer doesn't want to agree to it then that's fine. But it does save the time and expense of going through a complete investigation. As far as what you mentioned about the truth or not of a particular allegation, the charge from itself doesn't take a requirement that the charge is sworn to under penalty of perjury.

But oftentimes what happens is the employee has the perception of honest injury. It doesn't rise to the level of wrongful; willful perjurious kind of statement. So they believe in petitioning to the Government for assistance. The fact that we find no merit doesn't mean that they perjured themselves along the way. If we do find evidence of perjury we will refer that to the Department of Justice. Like any other Federal agency would do.

MR. GREINER: I think this wasn't a critique of the language used when you send a letter out to employers saying there's this complaint. We're suggesting that you may want to pursue mediation. Here's a program for you. The language, again, is just that it's very crucial that an employer not feel that it is

guilty until proven innocent. And that this charge itself is sufficient and would stand on its own weight.

And I think you did address that. But the length of these processes themselves are enough to bankrupt some small businesses.(interposing)

(CROSS TALKING)

CHAIR ABLAN: Thank you very much. Kimberly Phillips?

MS. PHILLIPS: I would like to take this opportunity to tell you that I'm delighted to be here. And my purpose here today is just to give you brief summary of the FDA's responsibility. The Food and Drug Administration touches the lives of Americans every day. Contact starts when we brush our teeth in the morning, shampoo our hair, take a pain reliever, feed our dog or enjoy a meal.

The Chicago District Office, of which I'm a part of, has approximately one hundred employees consisting of investigators, compliance officers, administrative support and other personnel. Our job is to assure our food is safe and wholesome. Cosmetics won't hurt us. Medicines and medical devices are safe and effective. And that radiation (unintelligible) devices such as dental x-ray machines, won't harm us.

First and foremost FDA is a regulatory agency charged with enforcing the Federal Food and Drug Cosmetic Act. Suddenly, FDA

is a scientific agency. FDA not only tests product samples but has research activities over a variety of consumer products that are under our responsibility.

Lastly, FDA is a consumer orientated agency. We inform and educate consumers concerning all regulations and products that fall under our jurisdiction. That's where I come in. I have the pleasure of working in our Public Affairs branch. I think working in Public Affairs is absolutely one of the best jobs in the agency.

Simply because you meet people from various backgrounds, large diverse groups of people ranging from school teachers, students, grass root consumers, advocate groups, senior citizens and of course small businesses. We provide educational tools and materials people need to do their jobs. We do this through publications, literature campaigns, such as our fight back campaign, which is our food safety campaign, or our Women's Health program, Take Time and Hear, which is our program geared towards senior women over fifty, which reminds them to take their medicines wisely.

We also do these at various public meetings. Again, my presentation is very brief but I'd like to thank you for taking the time and having this opportunity that you've allowed me to be here today. And I'll accept any questions.

CHAIR ABLAN: Thank you so much for being brief. We appreciate that, ha, ha. Any questions?

(CROSS TALKING)

CHAIR ABLAN: Is there anyone else that has any comments? Pam, did you want to say something? Not necessarily?

MS. PETERS: (not speaking into microphone) and Jim Robinson, who is the director of that office, reports directly to the deputy's secretary. Which means that we're not connected in any way, shape or form with MSHA, wage and hour division, OSHA, OSCCD, or the pension and welfare benefits administration.

And we would encourage any small business, or trade association, who has an issue with the Department of Labor to feel free to contact our office and we will facilitate whatever meetings or contacts need to be made. And we also work very closely with Gail McDonald and John Greiner on various issues. And that's how Mr. Friend attended today, because of the concerns that were raised at the Des Moines, Iowa office.

And so please feel free to give us a call. We have a toll free line, 888-9SBREFA. And I'll probably answer the call or Thomas Sims, who is also there. And someone from our office will be in Anchorage. Thank you.

CHAIR ABLAN: I'd like to publicly compliment Pamela and DOL for

taking on one of our cases that we in Region V really cared about for the last two years. And it took a long time and with Don and your help we finally facilitated a meeting. So thank you again for doing that.

Any final comments from anyone? Lyle?

MR. CLEMENSON: Yes, I have a couple of comments. Having been in business for a long time and going through several inspections and audits, IRS, the whole gamut, I find that for the most part I think regulators kind of lose their empathy for businesses and maybe businesses are a little bit too abrupt.

But the fact is that when a regulator comes on the property of a businessman I don't believe that they fully understand their impact it has on the business. And I think that if there's a little more respect on both sides, on both sides, I want to emphasize that. From both sides. That we as businessman and obviously residents of this great nation, that we can make it better.

And so having said that I feel that we need more communication. Communication. And respect to be able to make this thing work. And we also understand in business that regulators are trying to do their job. That's what they're getting paid for. But pause to remember that businesses pay for those wages that are being; and the cost that are being produced for those regulatory agencies.

Thank you.

CHAIR ABLAN: Anyone else. I would just like to thank you all so much for coming today. I know in terms of the Government people you feel like you got beat up a little bit. Didn't do that intentionally, but there's such a frustration out there that, you know, the old rule of we're from the Government and we're here to help you, everyone cringes in the small business community.

So hopefully when next time you send your people in they'll think of that before you throw down the gauntlet on us. Thank you so much everybody for participating.