BUSINESS & LABOR 5
EXHIBIT NO. 5
DATE 3/9/05
BILL NO. HB 630

THE SMALL BUSINESS ADVOCATE

SBA Office of Advocacy

February 2005
Vol. 24, No. 2

Message from the Chief Counsel

Regulatory Flexibility Is More Than Numbers

by Thomas M. Sullivan, Chief Counsel for Advocacy

The economists in Advocacy love numbers. After all, it is their job. Advocacy's attorneys love numbers, too. They could not be effective regulatory counsels if they did not. It all comes together in our latest Regulatory Flexibility Act (RFA) annual report. In it, Advocacy's efforts on behalf of small business are quantified.

Yet those numbers, impressive as they are, do not tell the whole story. They do not necessarily show the impact regulatory flexibility has on the life and work of thousands of small business owners and their employees across America.

More importantly, the focus on numbers tends to miss a central point and a main reason for the existence of regulatory flexibility, whether in a state or federal law, policy, or in an office like Advocacy. Small businesses ought to be involved, from the very beginning, when agencies design the regulations that implement the laws that Congress or the states pass. Regulatory flexibility is an attempt to institutionalize that mindset.

That point was made clear to me in a trip I took last month to Montana. It was my first trip there and I continually marveled at the size of the state and its vast open spaces. It seemed to me that it would be impossible for someone in the state capital of Helena to know what was going on in, say, Billings or Missoula. However, I was quickly proved wrong as Montanans told me that their state is "just a small town with really, really long streets." Their point was that Montanans look out for each other, and that the government and citizens see themselves as partners, not adversaries.

It is that kind of attitude that regulatory flexibility is designed to foster.

Regulatory flexibility is an attempt to institutionalize open-door polices. It is an attempt to hold government accountable for listening to its small businesses, and to give small businesses a clear path to express their concerns during the regulatory process. When that happens, entrepreneurs can concentrate on what is most important—running their business.

That is just what happened with Walter Schroth, third-generation owner of Schroth Industries in Indiana, Pennsylvania. I met Walter on a recent trip, and what he told me reminded me of why it is so important that regulators listen to the concerns of small business. His company produces lumber pilings used for shoring mines, fences, and other industrial applications. Treated with chemicals, the pilings resist corrosion and rotting and so reduce the chance of failure.

Federal regulators became concerned that lumber treated with certain chemicals could affect people who came into constant contact with it. They rightly wanted to reduce exposure for children climbing on playground equipment made with the treated lumber. However, when they proposed regulations they included treated lumber that did not come into direct regular contact with people, such as fences. The proposed regulations were so costly that Walter Schroth began to consider closing his family's business.

But because of the Small Business Regulatory Enforcement Fairness Act (SBREFA), Walter's voice (and those of others like him) was heard. The regulators sensibly exempted him and other manufacturers from using the most expensive solution for treated lumber as long as it would not come into direct contact with people. The result is that children (and anyone else who comes into regular contact with treated lumber) are safer, and the legitimate value of lumber that can withstand corrosion is maintained. At the same time, Schroth Industries can continue providing jobs and economic growth for Indiana, Pennsylvania. It is a win for everyone.

That is the way regulatory flexibility is. In this case, as the legal teeth within SBREFA, regulatory flexibility fosters an environment of mutual respect, cooperation, and mutual benefit. Those outcomes sometimes are hard to quantify. But if you look closely at our annual RFA report, just behind the numbers, you will find them. And for a moment, you can get a glimpse of what a small town with really, really long streets must be like.