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Congress of the United States
U.S. House of Representatives
Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515-6315

September 9, 2008

The Honorable Jim Nussle
Director
Office of Management and Budget
725 17th St. NW
Washington, DC 20503

RE: Importer Security Filing and Additional Carrier Requirements, Notice of Proposed Rulemaking, 73 Fed. Reg. 90 (January 2, 2008) [the "NPRM" or "10 +2 Rule"].

Dear Director Nussle,

As Chairwoman of the Small Business Committee, I am writing to you today regarding the impact of the 10 + 2 Rule on small firms. Among other areas, the House Small Business Committee has jurisdiction over the Regulatory Flexibility Act ("RegFlex"). RegFlex was enacted to respond to concerns that uniform application of federal regulations imposed disproportionate burdens on small businesses. In order to minimize the burden of rules on entrepreneurs, RegFlex mandates that federal agencies consider the potential economic impact of regulations on small entities.

Customs and Border Protection (CBP) has failed to meet its obligations under RegFlex to properly analyze the economic impact of the 10 + 2 Rule on small entities. OMB must ensure that CBP meets the requirements of RegFlex.

RegFlex requires each initial regulatory flexibility analysis (IRFA) to "contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities."[1] CBP has simply dismissed this important requirement by stating: "CBP does not identify any significant alternatives to the proposed rule that specifically address small entities."[2] The agency is obligated under RegFlex to describe alternatives to the 10 + 2 Rule which minimize significant economic impacts on small firms.

[1] 5 U.S.C. § 603.
[2] 73 Fed. Reg. 107.

Additionally, the IRFA fails to discuss the type of professional skills necessary for the filing of the information required by the 10+2 Rule.[3] RegFlex mandates that CBP include this information in the IRFA.[4]

CBP has stated that the rule "likely affects a substantial number of small entities."[5] However, the agency claims that "due to data limitations, we cannot determine if these effects will be significant on a per-entity basis."[6]

The NPRM will indeed have a significant economic impact on a substantial number of small entities. CBP should consider that small firms will face substantial costs in implementing the 10 + 2 Rule as a result of:

> **Increased Inventories:** While CBP estimates that implementation of the 10 + 2 Rule will require only a one-day increase in inventories, some small businesses are predicting that up to five days in additional inventory may be needed to ensure collection and filing of the data required by the NPRM. Small firms will face significant costs in maintaining this additional inventory. These costs include paying for greater storage capacity and incurring depreciation charges.
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> **Charges for Waiting Time:** As a consequence of the NPRM, cargo could sit at the port of export for as long as several additional days while the importer collects the 10 data elements required by the rule. Particularly in the early stage of implementation, a significant percentage of containers sent to port for shipment will be delayed because data elements are not available for filing. These containers will be subject to substantial additional charges at container yards. Small businesses will bear major costs as a result of these delays.
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> **Infrastructure and IT System Upgrades:** The requirements for collecting additional data will require small firms to make expensive modifications and upgrades to existing IT and data processing systems. Small businesses may lack the resources to make these upgrades.

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[3] Regulatory Assessment and Initial Regulatory Flexibility Analysis for the Notice of Proposed Rulemaking, Importer Security Filing and Additional Carrier Requirements, Cost, Benefit and Feasibility Study as Required by Section 203(c) of the Safe Port Act, Industrial Economics, Inc. (December 3, 2007).
[4] 5 U.S.C. § 603.
[5] 73 Fed. Reg. 107.
[6] Id.

Studies show that small businesses bear a disproportionate share of the federal regulatory burden. A recent study conducted for SBA found that regulatory costs for small businesses are 45 percent greater than for larger firms.[7] I strongly urge you to ensure CBP fully considers the economic impact of the 10 + 2 Rule on small firms and works to minimize it.

Sincerely,

Nydia M. Velázquez
Chairwoman
Committee on Small Business

cc: The Honorable W. Ralph Basham, Commissioner, U.S. Customs and Border Protection, Department of Homeland Security

cc: The Honorable Susan E. Dudley, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget

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[7] W. Mark Crain, The Impact of Regulatory Costs on Small Firms p. 56 (Sept. 2005).