

February 1993

PAPERWORK REDUCTION

Agency Responses to Recent Court Decisions



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**Program Evaluation and
Methodology Division**

B-247471

February 3, 1993**The Honorable John Glenn
Chairman, Committee on Governmental Affairs
United States Senate**

Dear Mr. Chairman:

Federal agency efforts to collect, analyze, and disseminate information from individuals, businesses, and other levels of government reflect tension between the need for information and the burdens imposed on others to collect it. Congressional efforts to coordinate information policy and reduce the burden of federal information collection led to the enactment of the Paperwork Reduction Act in 1980. One of the goals of the act was to minimize the paperwork burden on the public and maximize the usefulness of the information collected by the government.

The act gives to the Office of Management and Budget (OMB) authority over paperwork control, which allows OMB to determine "whether the collection of information by an agency is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility for the agency." OMB generally reviews all data collection activities of executive branch and independent regulatory agencies when such activities involve 10 or more respondents, regardless of whether the data collection is voluntary or mandatory. Agencies submit information collection requests (ICRS) to OMB for review and approval.

According to the act, OMB has approval authority over the "collection of information" by federal agencies, a process defined to include "the obtaining or soliciting of facts or opinions," through means such as reporting or recordkeeping requirements.¹ However, recent litigation, including one case that reached the U.S. Supreme Court, has established that OMB's authority under the law is limited with respect to requirements by executive branch agencies that information be disclosed to third parties. (See appendix I.)

The two court cases whose impact you asked us to consider, Dole v. United Steelworkers of America and Action Alliance of Senior Citizens v. Sullivan, interpreted the definition of "collection of information" under the Paperwork Reduction Act. In the Steelworkers case, the question was

¹44 USC, section 3502(4).

whether OMB had authority to review and approve rules requiring disclosure of information to third parties (such as employees or consumers), but not to a federal agency. It centered on an Occupational Safety and Health Administration (OSHA) standard requiring employers to post a notification warning workers of potential hazards at multiemployer sites where chemicals are used. The Supreme Court ruled that OMB did not have authority to review such third-party disclosure rules.

In the Action Alliance case, the question concerned a Department of Health and Human Services (HHS) requirement that recipients of federal funds conduct self-evaluations of their compliance with the Age Discrimination Act of 1975. Upon request, these were to be made available to the federal government and the public. The District of Columbia Court of Appeals ruled that OMB did have authority to review requirements for keeping records that could later be disclosed to federal agencies upon their request. (In the Steelworkers case, the Supreme Court made a distinction between information collection and disclosure requirements. It construed information collection requirements to "refer solely to the collection of information by, or for the use of, a federal agency," while disclosure rules "do not result in information being made available for agency personnel to use.") The Supreme Court ordered the Court of Appeals to review its Action Alliance decision in light of Steelworkers, which had been decided in the meantime. The Court of Appeals reached the same result and the Supreme Court refused to review that decision.

Purpose

As you requested, this report examines the effects on agency activities of the court cases, especially the Steelworkers decision, on the paperwork clearance process. After a preliminary analysis of affected ICR submissions and in accord with Committee staff, we restricted our study to OMB and three agencies: Department of Labor (DOL), Department of Health and Human Services, and Environmental Protection Agency (EPA). We examined all units affected by the Steelworkers decision within these agencies. (See appendix II for a fuller discussion of the objectives, scope, and methodology of this study.)

To identify the effects of the court decisions on agency behavior, we determined (1) what guidance, if any, agencies have received and what criteria they use to decide whether an ICR falls under the Steelworkers decision; (2) how broadly the agencies have interpreted the court cases; and (3) what changes the agencies have made in the number and type of ICR submissions they send to OMB for approval. Each is discussed below.

Principal Findings

The impact of the Steelworkers decision varied among the agencies we examined. Table 1 summarizes the agencies' actions resulting from their interpretation of the court decisions and the consequent change in the submission of ICRS. Each of these categories is discussed in turn.

Table 1: Agency Responses to the Dole v. United Steelworkers Decision

Agency	Guidance	Interpretation of the decision	Affected submissions	Total current submissions
Office of Management and Budget	No formal guidance issued	Staff indicated decision applies only to third-party disclosures that are not part of a larger data collection	Not applicable	Not applicable
Department of Labor	Informal guidance from Office of Solicitor on a case-by-case basis	No distinction between third-party disclosures and third-party recordkeeping	63 ^a	351
Environmental Protection Agency	Informal guidance from Office of General Counsel on a case-by-case basis (interim guidance rescinded)	Sole purpose of information activity must be disclosure; cannot be means to another end	2 ^a	235
Department of Health and Human Services	Informal guidance from Office of General Counsel on a case-by-case basis	Applies only to third-party disclosures	12	720

^aOne additional case has been identified as being exempt under Steelworkers (see appendix III).

Agency Guidance Under the Steelworkers Decision

We found that OMB has not developed any guidance for the agencies to use in deciding how the Court's decision affects OMB's clearance of information requests. OMB officials told us that they had not yet acted because of pending legislation that could effectively change the Steelworkers decision. However, the bill to which OMB refers was not introduced until May 1991, a full 15 months after the decision was handed down.²

Additionally, none of the three agencies we examined currently has formal, written guidance to use in implementing the Steelworkers decision. EPA officials did prepare an interim guidance memorandum in April 1991, discussing possible exemptions to the Paperwork Reduction Act created by the Steelworkers decision. However, EPA rescinded that guidance in September 1991, stating that "the impact of Steelworkers has

²S. 1139, "Paperwork Reduction Act of 1991," would have required that third-party disclosures be submitted to OMB for approval. Another bill, S. 1044, "Federal Information Resources Management Act," while amending provisions in the Paperwork Reduction Act of 1980, would not have affected the Court's decision. Neither bill became law during the 102d Congress.

been clouded by the more recent decision of the D.C. Circuit in Action Alliance of Senior Citizens of Greater Philadelphia v. L.W. Sullivan.³

All the agencies provide informal guidance on a case-by-case basis through the office of their general counsel or solicitor. This has led to variations among the agencies. Although they reported they had the sense that "reasonable" interpretations would be accepted by OMB, most of the officials we interviewed said that formal guidance would have been very helpful and that the lack of guidance was unusual and even "frustrating." OSHA officials, however, took a dissenting view. They told us there was no need for formal guidance since they regard the Steelworkers decision as providing sufficient clarity. Further, in their written comments, HHS management stated that the department does not require further OMB guidance. However, since this report documents different interpretations by other agencies, HHS will defer to others whether further guidance would be in order.

Agency Interpretations of the Steelworkers Decision

All agencies agreed that a situation involving a third-party disclosure only with no elements of data collection or recordkeeping requirements—the situation the Court ruled on in Steelworkers—would not be subject to OMB review. However, they did not all agree on how the case applied in other circumstances. In general, OMB, HHS, and EPA seem to interpret the cases similarly, while DOL interprets the cases quite differently.

OMB did not provide an official interpretation of the Steelworkers decision. However, staff comments suggest that their interpretation would make certain requirements for third-party disclosures subject to OMB review. According to an OMB official, there often is no definitive way to determine whether a particular ICR consists solely of a third-party disclosure (and thus is excluded from OMB review) or includes data collection or recordkeeping for agency use (and thus is subject to OMB review). For example, a W-4 form (which reports the number of tax exemptions claimed) provides information from employee to employer and may be viewed by some as a third-party disclosure and, therefore, not subject to OMB review under Steelworkers. However, when viewed as part of the entire tax reporting system (which ultimately goes to the Internal Revenue Service), this form may be considered data collection for government use and, therefore, subject to OMB review. In such cases, OMB officials indicated the Steelworkers decision would not exempt agencies from submitting

³EPA Memorandum, "Rescission of Interim Guidance on the Steelworkers Decision," September 19, 1991.

ICRs to OMB for review and approval. There is support for this view in Steelworkers: the Court uses tax records as an example of information collection covered by the act because the information "is provided to a federal agency, either directly or indirectly." However, OMB does not object when an agency does not submit ICRs for OMB review based on the agency's interpretation of the case.

At the other end of the spectrum, DOL construes the Steelworkers case to affect more ICRs than other agencies. DOL officials told us that if the primary intent of an ICR is to inform a third party, then it would be exempt from OMB review and approval under Steelworkers even if the government would eventually use the data. For example, OSHA requires that medical examinations be conducted in certain cases and that the written results be made available to the employee. Although OSHA may examine these records to ensure that they are kept and made available to the employee pursuant to the regulation, this information is primarily for the protection of employee health and would, therefore, applying DOL's interpretation, fall under Steelworkers and not be subject to OMB review. Conversely, if the primary intent is for the data to be provided to the government or if the government requires something extra, then the ICR is not affected by the Steelworkers decision and must be submitted to and approved by OMB.

Both HHS and EPA officials told us they interpret Steelworkers to include only cases of disclosure of information to third parties. Cases involving any degree of data collection or recordkeeping requirements with federal access require OMB review, a position identical to the one OMB staff provided.

HHS officials reported that, to be on the safe side, they generally clear ICRs with OMB, even when it may not be necessary, given the Steelworkers decision. Most information disclosures at HHS fall within the jurisdiction of the Food and Drug Administration (FDA).⁴

EPA officials reported to us that the test of whether OMB review is required is whether the purpose of the information activity is solely the disclosure of information to a third party. If that is the case, then there is no need to submit an ICR to OMB. If however, the information disclosed may be used by

⁴This pattern of generally clearing ICRs with OMB does not include drug labeling requirements. When OMB issued its final regulations in 1983 implementing the Paperwork Reduction Act of 1980, OMB and FDA agreed that drug labeling was exempt from OMB review under section 1320.7, paragraph (c)(2) of 5 CFR Ch. 111, which states "the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not included within this definition."

a federal agency (for purposes such as compliance monitoring or enforcement), then the criteria for exemption in the Steelworkers decision does not apply and the ICR must be submitted to OMB for approval. The Hazardous Waste Manifest is an example of a disclosure that may be used for other purposes. This document accompanies shipments of hazardous waste from facilities that generate the waste to treatment storage and disposal facilities. While its primary purpose is to disclose what is in the shipment to state environmental agencies, the manifest may be used to monitor compliance with federal regulations and to support enforcement actions taken by federal entities.

Initially, EPA apparently was prepared to interpret the Steelworkers decision more broadly than it does now, as seen in the interim guidance memorandum of April 1991. The memorandum stated that "the import of the Court's decision is potentially far-reaching," in that it might apply to federal information programs involving reporting directly to state and local governments. However, according to EPA officials, on the basis of the Supreme Court's refusal to grant certiorari in Action Alliance and its procedural history, the Court has in effect "blessed the reasoning" of the D.C. Circuit in that case.

Moreover, EPA officials reported it was prudent to adopt a narrow interpretation of the Steelworkers decision because there was no real advantage in doing otherwise. They expressed concern that if an information collection does not display a current OMB control number, no enforcement penalty can be imposed for failure to comply with the request.

OSHA officials expressed less concern over this for two reasons: first, they believe OSHA has OMB approval for all recordkeeping requirements not covered under Steelworkers; and second, where appropriate, OSHA issues citations for both the substantive violation (for example, failure to perform a proper medical exam) and the recordkeeping violation (for example, failure to keep records of medical exams.)

Agency Changes in ICR Submissions

The agency views provided above were most often expressed to us in interviews, but are not formalized in written agency policy. In this section,

we examine the actual behavior of the agencies to determine whether prevailing agency practices correlate with their expressed views.⁵

As with interpretation of the court cases, there is a great deal of variation in the number and type of ICRs no longer being sent to OMB for approval. To date, 77 submissions or portions of submissions have not been forwarded to OMB for renewal based on the Steelworkers decision: 63 of 351 total submissions at DOL (including 48 of 49 in OSHA), 12 of 720 at HHS, and 2 of 235 at EPA. This accounts for a change of approximately 89 million burden hours.⁶ (See appendix III for a detailed list.) In addition, DOL and EPA have each identified one new data collection activity that will not be sent to OMB as a result of the Steelworkers decision.

(Although we did not include the Federal Trade Commission (FTC) in the scope of this study, we learned from OMB that the impact of the Steelworkers decision on ICR submissions by FTC has been extremely significant. According to OMB, FTC has reduced its submissions of ICRs for review by the largest proportion of any federal agency. After the Steelworkers decision, the FTC removed 14 of 17 ICRs from OMB review, resulting in a decrease of approximately 62 million out of a total of 65 million burden hours. (See appendix III.) This information has been verified with officials of the FTC.)

As evidenced by the numbers cited above, among the agencies we examined, DOL has made the greatest change in its submissions to OMB. As reported by the agency and confirmed by our analysis, DOL has opted to remove portions of ICR submissions having to do with third-party actions, even when submitting the remainder of the ICR to OMB for approval.⁷ As we noted earlier, unlike the other agencies, DOL does not make a distinction between third-party disclosures and third-party recordkeeping: no third-party actions are submitted to OMB. So far, there have been no disputes, and the partial DOL submissions to OMB have been approved. However, OMB clearly states that approval is only for the sections of the ICR that have been submitted.

⁵There was speculation about what ICRs would likely be affected by the Steelworkers decision, and staff at OMB prepared a list of potentially affected submissions. Although this list was widely circulated, it was not an official OMB document. Among the three agencies we studied, we found only 8 of 52 ICRs included in the list that are no longer submitted to OMB for review. However, other ICRs not on the list are also not being submitted. Overall, the ICRs not now being submitted account for 89 million burden hours, far less than the 175 million suggested in the list.

⁶A burden hour is the measure of time required to fill out a form, read and understand the instructions, and to develop, compile, and review the information requested.

⁷Changes in two submissions were so small that they resulted in a reduction of only 1 burden hour each.

HHS does not delete the disclosure sections from the complete ICRs they send to OMB. Consequently, it is only when third-party disclosure is the sole reason for the request that this agency does not submit an ICR to OMB. This is true for new submissions as well as renewals.

Although EPA's policy is to separate out third-party disclosure from a complete ICR if a clear-cut situation exists, the agency to date has not had such cases. Therefore, the only ICRs not submitted to OMB have been entirely third-party disclosure actions.

Data on the number of submissions affected by the court decisions are complete to date, but they represent only revisions or renewals of prior submissions. The agencies told us they have no idea how many more submissions will be affected by the court decisions over the next 2 years as ICRs expire. Further, they are unlikely to identify either the new information requests that would have been submitted or any existing rules that are undergoing regulatory change. Therefore, they cannot tell us how many ICRs might be affected by the Steelworkers case.

Conclusions

The impact of the Steelworkers and related Action Alliance decisions varied among agencies. However, in total, it affected 77 ICRs at the three agencies we examined, accounting for a change of about 89 million burden hours. Since no overarching guidance was provided by OMB, each agency developed its own based on its interpretation of the court decisions. As a result, the actions taken by the agencies varied from virtually no change whatsoever (EPA, HHS) to significant changes (DOL).

Recommendation

Given our finding that agencies have interpreted the Steelworkers decision quite differently and in the absence of legislative changes, we recommend that the Director of OMB issue guidance to clarify when agencies are required to submit ICRs for review under the Paperwork Reduction Act.

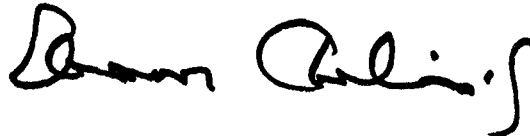
Agency Comments

We received formal comments from the Office of Management and Budget, Department of Labor, Department of Health and Human Services, and Environmental Protection Agency. The agencies' comments were mainly technical and have been incorporated in this report where appropriate. OMB did not specifically comment on our recommendation that they issue guidance; a copy of OMB's letter is included as appendix IV.

As we agreed with your office, we plan no further distribution of this report until 30 days from its date of issue, unless you publicly announce its contents earlier. We will then send copies to the Director of OMB, the Secretaries of HHS and DOL, and the Administrator of EPA. We will also make copies available to other interested parties upon request.

If you have any questions or would like additional information, please call me at (202) 275-1854 or Robert L. York, Director of Program Evaluation in Human Services Areas, at (202) 275-5885. Other major contributors are listed in appendix V.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Eleanor Chelimsky". The signature is fluid and cursive, with a large initial "E" and a long, sweeping tail.

Eleanor Chelimsky
Assistant Comptroller General

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Abbreviations

EPA	Environmental Protection Agency
DOL	Department of Labor
FDA	Food and Drug Administration
FTC	Federal Trade Commission
GAO	General Accounting Office
HHS	Department of Health and Human Services
ICR	Information collection request
OSHA	Occupational Safety and Health Administration
OMB	Office of Management and Budget

Court Decisions

Dole v. United Steelworkers of America (494 U.S. 26 (1990))

Pursuant to its authority under the Occupational Safety and Health Act, the Department of Labor promulgated a "Hazard Communication Standard," imposing various requirements on manufacturers to inform employees of potential hazards caused by chemicals in the workplace. DOL submitted the standard to the Office of Management and Budget for its review of paperwork requirements under the Paperwork Reduction Act of 1980. OMB subsequently rejected three provisions contained in the standard, and DOL published the standard minus the three provisions.⁸ The United Steelworkers of America, however, requested reinstatement of the OMB-disapproved provisions. The Third Circuit Court of Appeals granted an order reinstating the provisions, holding that OMB lacked authority under the Paperwork Reduction Act to disapprove them (Steelworkers v. Pendergrass). The federal government sought Supreme Court review of the Third Circuit's decision.

The Supreme Court granted review "to answer the important question whether the Paperwork Reduction Act authorizes OMB to review and countermand agency regulations mandating disclosure by regulated entities directly to third parties."

Under the Paperwork Reduction Act, the "collection of information" that is subject to OMB review is defined in terms of making the information available for agency personnel to use: that is, the information requested is provided to a federal agency, either directly or indirectly. The Court noted that "By contrast, disclosure rules do not result in information being made available for agency personnel to use. The promulgation of a disclosure rule is a final agency action that represents a substantive regulatory choice."⁹ Therefore, the Court ruled that the Paperwork Reduction Act does not provide OMB with the authority to review and disapprove agency regulations that mandate disclosure by regulated entities directly to third parties.

⁸The three provisions were: (1) a requirement that employees working at multiemployer sites be provided with data sheets describing the hazardous substances to which they are likely to be exposed; (2) an exemption of consumer products used in the workplace in the same manner and resulting in the same frequency and duration of exposure as in normal consumer use; and (3) an exemption for drugs sold in solid final form for direct administration to patients.

⁹Dole, Secretary of Labor, et al. v. United Steelworkers of America et al., Opinion of the Court, 494 U.S. 26, 33 (1990).

**Action Alliance of
Senior Citizens v.
Sullivan (930 F.2d 77
(D.C. Cir. 1991))**

A second case, Action Alliance of Senior Citizens of Greater Philadelphia v. Sullivan, decided by the District of Columbia Court of Appeals, also concerned the interpretation of the definition of "information collection" under the Paperwork Reduction Act of 1980. Pursuant to the Age Discrimination Act of 1975, the Department of Health and Human Services promulgated regulations including a provision under which agencies providing federal financial assistance would require recipients to complete a written self-evaluation of their compliance with the act and, upon request, make the evaluation available to the agency and the public for 3 years following completion. OMB disapproved this self-evaluation provision. The Action Alliance of Senior Citizens sued, claiming that such self-evaluations were not subject to OMB review under the Paperwork Reduction Act.

The Court of Appeals, taking into account the Supreme Court's decision in Steelworkers, found that agency-specific rules calling for self-evaluation under the Age Discrimination Act are subject to OMB review under the Paperwork Reduction Act. The court based its decision on its finding that the regulation required the recipient to make the information available to the agency upon request. The court reasoned that even if the agency did not ask for the information, it would be collected for the potential use of the agency. As a result, the self-evaluation rule did fall within the definitions of "recordkeeping requirement" (which includes "maintaining specified records") and "collection of information" (which includes obtaining or soliciting of information "by an agency" through the use of recordkeeping requirements) and, therefore, did require OMB approval under the Paperwork Reduction Act.

Objectives, Scope, and Methodology

The Supreme Court's ruling in Dole v. United Steelworkers of America appears to have lessened OMB's authority over the executive branch agencies, at least with respect to third-party disclosure actions. The objective of our study was to evaluate how agencies have interpreted and responded to the Court's decision on OMB's authority under the Paperwork Reduction Act of 1980.

To determine how Dole v. Steelworkers has affected the implementation of the Paperwork Reduction Act, we answered the following evaluation questions:

1. What guidance has OMB provided to the agencies? What guidance have agencies provided internally? What criteria are the agencies using to determine if a submission falls under the Steelworkers decision?
2. How broadly have OMB and the agencies interpreted the Supreme Court decision? Do agency officials view it as applying only to third-party disclosure actions or other types of third-party actions (such as data collection and recordkeeping) as well? How do agency officials view the effects of the Action Alliance of Senior Citizens v. Sullivan decision on the paperwork clearance process?
3. What changes do the agencies report in the number and type of submissions sent to OMB? How do agency officials expect the number and type of submissions to change as current approvals expire?

To answer the evaluation questions, we conducted a literature review, an OMB records review, and agency interviews. Further, we studied case examples from three agencies.

The literature review included material on the Supreme Court case, other related lower court decisions, the Paperwork Reduction Act, legislative history, hearings, pending legislation to reauthorize the act, pertinent law review and other research articles, and case histories of submissions to OMB that might have been affected by the Paperwork Reduction Act.

We used the OMB Management Information System to verify the discontinuance of or change in submissions that agencies reported to us. We selected random samples from each agency, further stratifying DOL into OSHA and non-OSHA since we had evidence that OSHA behaves differently from other DOL offices.

We interviewed officials in pertinent offices in OMB to determine what effect the Supreme Court decision has had on how OMB administers the program, specifically with regard to external guidance to agencies, reduction in burden hours, and change in submissions. Agency officials and staff were interviewed to determine if there have been changes in submissions owing to the court decisions, in OMB and agency policies and practices surrounding submissions on third-party actions, and in preparation for future court cases. Officials interviewed included analysts responsible for preparing the ICRs, management officials responsible for submitting the requests, OMB management officials responsible for administering the act, and representatives from the general counsels' offices.

As agreed with the Committee staff and based on a preliminary review of affected submissions, our evaluation focused on the Office of Management and Budget, the Department of Labor, the Department of Health and Human Services, and the Environmental Protection Agency. We collected multisite case examples at DOL, HHS, and EPA to thoroughly evaluate the impact of the Steelworkers and Action Alliance decisions.

We performed our work in accordance with generally accepted government auditing standards between January and November 1992.

Effect of Steelworkers Decision on Information Collection Requests

Selected ICRs Affected by the Steelworkers Decision

The Office of Management and Budget provided us with data on ICR submissions from DOL, HHS, EPA, and FTC affected by the Steelworkers decision. Table III.1 provides these data and OMB's estimate of burden hours.

Table III.1: Submissions Affected by the Steelworkers Decision

Agency	OMB control number	Submission title	Affected burden hours
Department of Labor			
Non-OSHA			
	1205-0276	Plant Closing Notification—WARN	89,840
	1210-0040	Summary Annual Report	5,045,075
	1210-0049	Pension Class Exemption 77-4	1,633
	1210-0053	Claims Procedures	20,634
	1210-0054	Pension Class Exemption 78-19	1
	1210-0059	Pension Class Exemption 79-1	64,719
	1210-0063	Pension Class Exemption 77-8	1,445
	1210-0064	Pension Class Exemption 80-83	1
	1210-0076	Loans to Pension Plan Participants	619,440
	1210-0079	Gold Eagle Coins Class Exemption	33,333
	1215-0121	Worker Experience/Career Exploration	129
	1215-0145	Worker Information	26,882
	1215-0146	Migrant Housing Terms and Conditions	647
	1215-0162	Walsh-Healey Regulations	157
	1215-0170	Employee Polygraph Records 29 CFR 801	102,735
OSHA			
	1218-0003	Cargo Handling Gear—Compliance Records	10,724
	1218-0004	Quarterly Report—Migrant Housing Conditions	480
	1218-0010	Vinyl Chloride Monitoring Records	2,361
	1218-0011	Designation of Competent Person Records	800
	1218-0044	4-Dimethylaminoazobenzene Monitoring Records	165
	1218-0048	Occupational Exposure to Noise Records	5,416,523
	1218-0054	Construction Oxygen and Toxic Gas Records	703
	1218-0061	Cotton Dust Monitoring Records	209,311
	1218-0065	Access to Employee Exposure and Medical Records	1,268,475
	1218-0067	Air Quality Record, Underground Construction	46,876
	1218-0069	Diving Related Recordkeeping	111,005
	1218-0072	Hazard Communication Standard	34,776,000
	1218-0075	Organizational Statement for Fire Brigades	268

(continued)

**Appendix III
Effect of Steelworkers Decision on
Information Collection Requests**

Agency	OMB control number	Submission title	Affected burden hours
	1218-0079	Beta-Propiolactone Monitoring Records	3
	1218-0080	Ethyleneimine Monitoring Records	204
	1218-0081	N-Nitrosodimethylamine Monitoring Records	122
	1218-0082	Benzidine Monitoring Records	360
	1218-0083	3,3, Dichlorobenzidine Monitoring Records	546
	1218-0084	Alpha-Naphthylamine Monitoring Records	500
	1218-0085	4-Nitrobiphenyl Monitoring Records	51
	1218-0086	Methyl-Chloromethyl Ether Monitoring Records	417
	1218-0087	Bis-Chloromethyl Ether Monitoring Records	309
	1218-0088	2-Acetylaminofluorene Monitoring Records	26
	1218-0089	Beta-Naphtylamine Monitoring Records	68
	1218-0090	4-Aminodiphenyl Monitoring Records	123
	1218-0092	Lead Standard Monitoring Records	1,650,832
	1218-0095	Concrete and Masonry Construction Compliance Records	11,667
	1218-0099	Respiratory Protection Fit Testing Records	1,181,764
	1218-0101	1,2-Dibromo-2-Choloropropane Monitoring Records	236
	1218-0103	Ionizing Radiation Monitoring Records	133,736
	1218-0104	Inorganic Arsenic Monitoring Records	7,273
	1218-0108	Ethylene Oxide Monitoring Records	199,145
	1218-0115	Construction Crane Rating Chart	4,550
	1218-0121	Powered Platforms for External Maintenance Records	243,750
	1218-0128	Coke Oven Emissions Monitoring Records	155,335
	1218-0129	Benzene Monitoring Records	220,843
	1218-0130	Electrical Standards for Construction Records	253,293
	1218-0131	Chemical Exposure in Laboratories Monitoring Records	283,843
	1218-0132	Accident Prevention Tags Compliance Records	30,225
	1218-0137	Design of Cave-In Protection Systems Records	69,580
	1218-0138	Hazardous Waste and Emergency Response Records	1,365,953
	1218-0143	Compliance with Mechanical Press Standards Records	114
	1218-0144	Recordkeeping for Grain Handling Facilities	52,914
	1218-0145	Formaldehyde Monitoring Records	799,519
	1218-0150	Lockout/Tagout Compliance Records	1,334,413
	1218-0151	Crane or Derrick Platforms Compliance Records	104
	1218-0153	Electric Power Generation Compliance Records	1
	1218-0156	Logging Operations Compliance Records	517

(continued)

**Appendix III
Effect of Steelworkers Decision on
Information Collection Requests**

Agency	OMB control number	Submission title	Affected burden hours
Department of Health and Human Services			
	0910-0149	Tamper-Resistant Labeling OTC Drugs and Cosmetics	2,000
	0910-0177	Nutrition Labeling 21 CFR 101.9	4,860,585
	0910-0198	Food Labeling—Sodium Content	19,712
	0910-0207	Laxative Drug Products for OTC Human Use	1
	0910-0218	Labeling of Weight Control Foods	300,025
	0910-0224	Cholesterol, Fats and Fatty Acids Labeling	1
	0910-0232	Anthelmintic Drug Products for OTC Human Use	24
	0910-0235	Foreign Language Disclosure Labeling	300
	0910-0237	Bronchodilator Drug Products for OTC Human Use	1
	0910-0242	Aspartame as an Inactive Ingredient in Human Drug Products	10
	0910-0250	Labeling Requirements for Sulfiting Agents	1
	0910-0255	Internal Analgesic, Antipyretic, Antirheumatic Drug Products for OTC Human Use	1
Environmental Protection Agency			
	2050-0072	Emergency and Hazardous Chemical Inventory Forms and Community Right-to-Know Reporting Requirements	26,482,739
	2050-0092	Title III Emergency Planning and Emergency Release Information	1,501,832
Federal Trade Commission			
	3084-0025	Funeral Industry Rule	177,000
	3084-0046	Labeling of Apparel Textiles	4,060,000
	3084-0052	Textile Act Rules	15,540,000
	3084-0053	Wool Act Rules	2,281,000
	3084-0056	Pre-Sale Availability of Warranties	1,010,000
	3084-0063	Fair Packaging and Labeling Act Regulations	12,000,000
	3084-0064	Fur Act Rules	108,000
	3084-0067	Games of Chance Rule	10,000
	3084-0069	Appliance Industry Rule	141,000
	3084-0079	Used Car Trade Regulation	918,000
	3084-0085	Regulation E, Electronic Funds Transfer	726,000
	3084-0086	Regulation M, Consumer Leasing	80,700
	3084-0087	Regulation B, Equal Credit Opportunity	6,357,400
	3084-0088	Regulation Z, Truth-in-Lending	18,969,000

**New Information
Collections Not Sent
to OMB Because of
the Steelworkers
Decision**

Two potential information collection requests were not submitted to OMB because of the Steelworkers decision. They are: the Process Safety Management Rule (DOL) and the Farmworker Protection Standards Rule (EPA).

Comments From the Office of Management and Budget



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

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Honorable Eleanor Chelimsky
Assistant Comptroller General
United States General Accounting Office
Washington, D.C. 20548

GAO/PEMD

Dear Ms. Chelimsky:

Thank you for providing the Office of Management and Budget (OMB) with an opportunity to comment on a draft of the forthcoming General Accounting Office (GAO) report entitled: Paperwork Reduction: Agency Responses to Recent Court Decisions. The report examines the effect on the paperwork review process of the 1990 Supreme Court decision in Dole v. Steelworkers, and the subsequent D.C. Circuit Court decision in Action Alliance v. Sullivan. We have the following comments on the draft report.

1. The draft report represents as an official OMB position the opinions about the Dole and Action Alliance decisions expressed by OMB staff during your interviews. See pages 6 ("Interpretations of the Decision"); 7 ("OMB construes the Steelworkers case", "Its interpretation", "According to OMB", "OMB views", "OMB believes"); and 10 ("contrary to OMB's view"). OMB staff provided informal comments regarding various interpretations of the two court decisions for illustrative purposes only; these views do not constitute any formal interpretation of the cases. We therefore request that the report not present any informal staff comments as official OMB opinions or interpretations.

In addition, we would like to clarify that OMB does not "Make[] decisions strictly on a case-by-case basis" (page 7). As the draft report notes, OMB has not issued formal guidance on the Dole v. Steelworkers decision. When an agency has submitted a paperwork to OMB for review, we have reviewed that submission. When an agency does not submit a paperwork for OMB review, based on its interpretation of Dole, we have not objected; of course, such an agency takes the risk that respondents themselves might object, by seeking to rely upon the Act's public protection provision. 44 U.S.C. § 3512.

2. In assessing the impact of the Dole v. Steelworkers decision, the draft report refers to the number of information collection activities that agencies no longer submit to OMB for review. Reporting only the number of information collection activities removed from OMB review presents an incomplete picture of the impact of the Dole decision. While a relatively small number of information collection activities have been removed from OMB

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review, they constitute a relatively large percentage of the total paperwork burden imposed by the Government.

When viewed in terms of the number of information collection activities submitted for review, less than one percent of the information collection packages have been removed formally from OMB review (excluding the Treasury Department). However, when viewed in terms of the burden hours imposed by information collections, Federal agencies have removed 14 percent of the information collection activities formerly reviewed by OMB (excluding Treasury). Collectively, Federal agencies have removed 151 million of the 1.08 billion hours of information collection activities that OMB reviewed prior to the Dole decision (excluding Treasury). We therefore suggest that, in assessing the impact of the Dole decision, the report also present by burden hour the collections no longer submitted to OMB for review.

In addition, in assessing the impact of the Dole decision, we think that it would be informative to refer in the report to the actions of the Federal Trade Commission (FTC). Measured by total number of collections or total burden hours, FTC has removed the largest amount of information collection activities from OMB review. FTC has removed 98 percent of its information collection activities from OMB review. Subsequent to the Dole decision, the FTC removed 14 information collection activities from OMB review. Of the 65 million hours of information collection burden attributed to FTC prior to the Dole decision, 64 million hours of information collection burden are no longer submitted for OMB review.

3. We suggest that Appendix III list former OMB approval numbers for the collections that are no longer submitted for OMB review. Also, a breakdown of the agencies within the Department of Labor (ETA, ESA, PWBA) which have removed information collection packages would be helpful. For your convenience, we have enclosed a list that provides the information we have suggested.

4. Several inaccuracies also appear in the draft report, corrections for which are suggested below.

p.2 The draft report quotes the 1988 information collection budget for a list of information collection activities subject to the Office of Information and Regulatory Affairs (OIRA) review. The definitions at 5 CFR 1320 (c) (1) and (2) represent a more complete and authoritative discussion of the term "information collection."

p.13 OIRA records show that 91, not 55, information collection packages have not been resubmitted for OMB review.

**Appendix IV
Comments From the Office of Management
and Budget**

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p.14 OIRA records show that the Occupational Safety and Health Administration has removed 48, not 27, information collection packages from OMB review.

Thank you again for an opportunity to review the draft report and provide comments. Please contact me if you have any questions.

Sincerely,



James B. MacRae, Jr.
Acting Administrator
and Deputy Administrator
Office of Information
and Regulatory Affairs

Enclosure

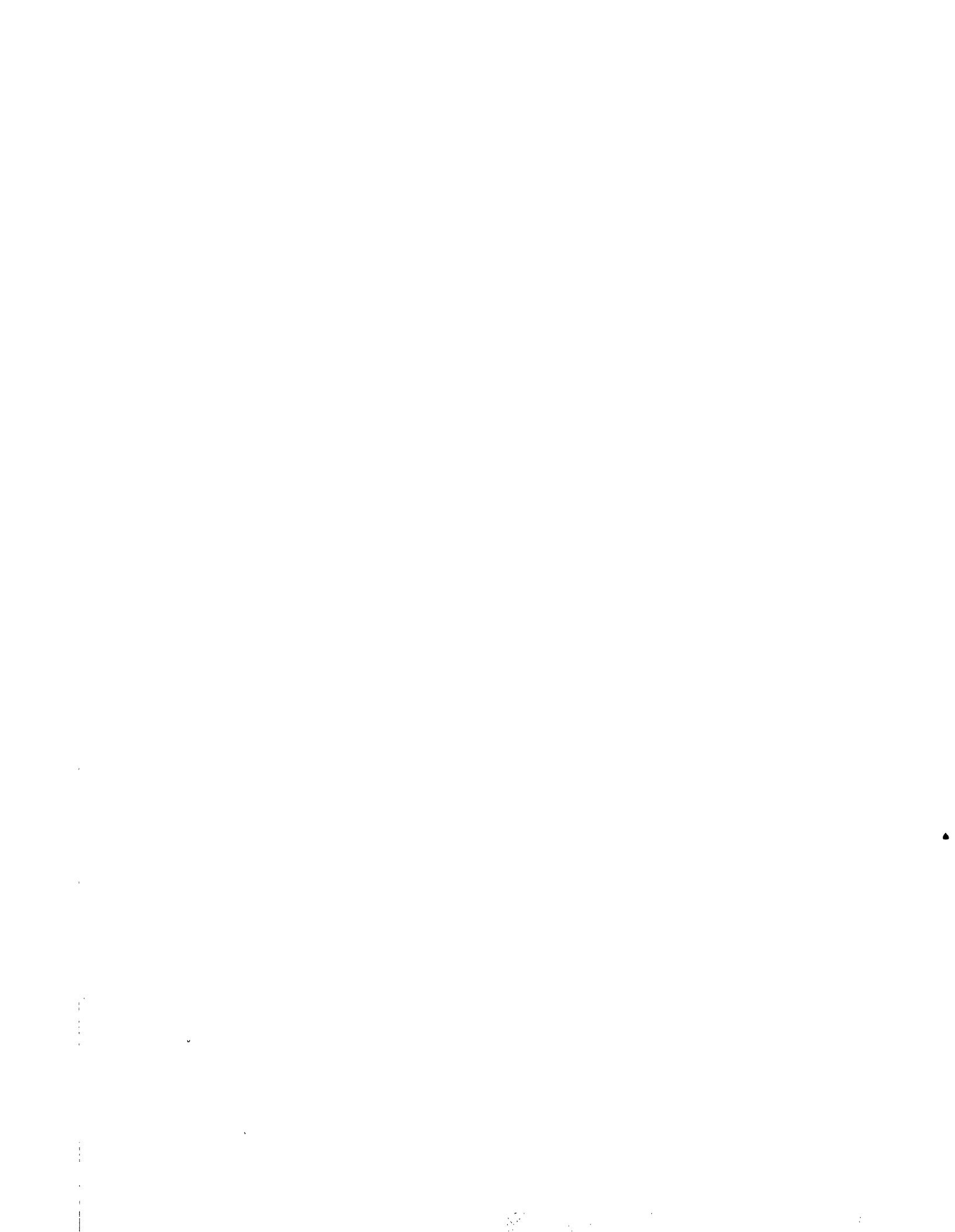
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