despite scientific evidence otherwise. This is the case in California, where regulators are adopting extremely low public health goals (PHGs) for drinking water. Because United States Environmental Protection Agency (EPA) often looks to California for guidance when developing regulations, we are concerned that these PHGs will subsequently be incorporated by EPA into federal drinking water standards. These same activist groups may then ask FDA to develop similar standards for bottled water that are unachievable and without scientific basis. This could be very costly, if not impossible, for the bottled water industry to comply.

A similar debate is occurring at the state and federal levels with regard to bisphenol A (BPA), a chemical building block used primarily to make polycarbonate plastic and epoxy resins. Polycarbonate is a strong, clear and reusable type of plastic that is used to make many different products, including food storage containers, medical devices, lab equipment, sports equipment, and even eye glasses. Many of the bottled water industry's 3- and 5-gallon bottled water containers are made of polycarbonate plastic, which has been approved by FDA as a food-contact plastic based on migration and safety data. This clearance process includes stringent requirements for estimating the levels at which such materials may transfer to the diet. FDA's safety criteria require extensive toxicity testing for any substance that may be ingested at more than negligible levels. This means FDA has affirmatively determined that, when cleared plastics are used as intended in food-contact applications, the nature and amount of substances that may migrate, if any, are safe.

Polycarbonate plastic has been the material of choice for food and beverage product containers for nearly 50 years because it is lightweight, highly shatter-resistant, and transparent. During that time, many international studies have been conducted to assess the potential for trace levels of BPA to migrate from lined cans or polycarbonate bottles into foods or beverages. The conclusions from those studies and comprehensive safety evaluations by government bodies worldwide are that polycarbonate bottles are safe for consumer use.

FDA is supporting further studies, by both governmental and non-governmental entities, to provide additional information and address uncertainties about the safety of BPA. FDA's National Center for Toxicological Research is pursuing a set of studies on the safety of low doses of BPA, and studies are being pursued in collaboration with the National Toxicology Program and with support and input from the National Institute for Environmental Health Sciences. The National Institute of Environmental Health Sciences is also providing $30 million in funding to study BPA, which includes support both for FDA studies and external grants.

Even so, consumer and environmental NGOs are successfully pushing state and federal legislators and regulators to restrict the use of BPA in food and beverage containers. At least eight states now have some sort of BPA restriction in place, with legislators and regulators rushing to judgment based far less on science and far more on emotion. Similar proposals are gaining traction at the federal level. A proposed amendment to the Food Safety and Modernization Act that would have restricted the use of BPA in certain consumer products failed to gain traction during 2010, but the debate is clearly not over. In May of 2010, EPA sent a proposal to the White House Office of Management and Budget (OMB) (which is still under review) that would add BPA to EPA's "chemicals of concern" list. And less than a month ago,

EPA requested that OMB review its plan to solicit comments this year about a new BPA screening framework in order to determine the potential for BPA to disrupt hormonal functioning at lower levels.

IBWA is very supportive of FDA's extensive ongoing research regarding the safety of BPA, and strongly believes that this work must be completed before any federal regulations affecting its use are implemented. As consumer and environmental NGOs continue to push state and federal regulators to adopt substance testing requirements that are not achievable and/or scientifically sound, the bottom line risk to the bottled water industry is the replacement of realistic, science-based toxicology with emotional and perceived political correctness. That is simply a risk the bottled water industry cannot afford to take.

Workplace Safety

The bottled water industry has a good working relationship with the United States Department of Labor's Occupational Safety and Health Administration (OSHA), which has even developed bottled water industry web-based training tools on occupational safety and health topics.

IBWA understands that OSHA is in the process of changing its noise standard and ear protection rules. Currently, employers may use effective personal protective equipment (PPE), like earplugs and ear muffs, to protect employees from excessive levels of noise if they are more cost-effective than using extensive engineering and administrative controls that involve noise-dampening technologies for machines and work scheduling. The Agency recently announced that it intends to reinterpret noise control standards to now require employers to reduce noise levels in the workplace through any possible engineering and administrative overhauls that are possible. This would be instead of accepting the use of devices like earplugs, and the Agency has further indicated that it plans to enforce these changes by instructing OSHA inspectors to cite employers with OSHA violations should they fail to make the required changes or cannot prove such changes will put the employer out of business.

IBWA understands that OSHA is changing these noise standard and ear protection rules outside any formal rulemaking process that would allow for public comment and analysis of the impact of such changes on small businesses. We believe that implementation of such changes would be extremely cost-prohibitive to the bottled water industry, and with little to no benefit to its employees.

OSHA also recently published a proposed rule (Proposed Consultation Agreements: Proposed Changes to Consultation Procedures Rule) that seeks to increase the amount of information shared between its on-site consultation and enforcement programs. OSHA's on-site consultation program has historically been very beneficial for small business, providing, at no cost to the employer, worksite visits to identify hazards and advice on compliance with OSHA regulations and standards.

Part of this program's success has been based on the understanding that an employer does not have to worry about being reported to OSHA's enforcement program – information is kept

confidential as long as workers are not in imminent danger and the employer agrees to follow the advice. Some bottled water adversaries have tried to use historical OSHA data and reports to claim that bottled water industry facilities are hazardous to employees. In reality, the bottled water industry has worked closely and cooperatively with OSHA to ensure its facilities and practices are safe for its employees. IBWA is concerned that proposed changes to the rule may discourage bottled water companies from participating in the on-site consultation program out of fear of being subject to additional and unnecessary OSHA enforcement inspections. We hope that your Committee will encourage OSHA to consider our concerns.

Conclusion

Thank you, Chairman Issa, for considering our comments. We look forward to continuing a dialogue with you and your staff on the impact of regulations on bottled water production and distribution in the United States. Please do not hesitate to contact us if you have any questions or if we can ever be of any further assistance to you.

Sincerely yours,

Joe Doss

Joseph K. Doss
President and CEO

ISPA
INTERNATIONAL
SLEEP
PRODUCTS
ASSOCIATION

January 11, 2011

The Honorable Darrell Issa
Chair
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

Thank you for your letter dated December 29, 2010 and the opportunity to provide input on areas where government regulation is harming U.S. mattress manufacturers and limiting job growth in this industry.

The International Sleep Products Association (ISPA) represents mattress manufacturers and their suppliers. Of particular concern to our industry are several costly and unnecessary regulations administered by the Consumer Product Safety Commission (CPSC), summarized below. The mattress industry is nearly 97% composed of small businesses. Therefore, even incremental increases in costs weigh heavily on our members.

The mattress industry supports practical regulations that protect consumers, improve safety, and allow manufacturers to make a product that consumers will find safe, comfortable and affordable. However, we do not support superfluous requirements that impose costs and other regulatory burdens, and provide no discernable safety benefit.

We urge your committee to consider the impact of the following regulations on mattress manufacturers.

The Consumer Product Safety Improvement Act

Many requirements in the Consumer Product Safety Improvement Act (CPSIA) initially were intended to target safety issues related to children's toys, infant products and the like. For example, in reaction to incidents involving lead in children's toys, Congress decided to require that these products be tested for lead content by labs accredited by the CPSC.

The CPSIA as enacted, however, set numerous new mandates that have imposed added costs on manufacturers of "general purpose" products like mattresses that are used by both adults and children. As a consequence, the CPSC's new regulations implementing the accredited lab requirements treat those adult-size mattresses that are marketed primarily to consumers 12 and under as a "children's product." In practical terms, this means that for a mattress manufacturer to comply with the CPSC's two mattress flammability standards, all fire testing related to these "children's mattresses" now must be conducted by accredited labs. Until this point, these tests were performed either "in house" or by third parties that were not accredited by CPSC at the time.

Unlike the incidents of excessive levels of lead in toys that first motivated Congress to commence work on the CPSIA, the mattress industry has a laudable reputation for meeting its obligations under the CPSC's flammability standards. Furthermore, since the first of these standards went into effect in the mid-1970s, the incidence of mattress fires, deaths, and injury and property damage, have dropped substantially.

Nevertheless, given the strict manner in which the CPSC has applied its new CPSIA authority, a number of mattress manufacturers have had to retest prototypes they use to make adult-size mattresses that are intended primarily for use by consumers 12 and under. The costs of these flammability tests can range from to $1150 to $2650 per mattress prototype. Depending on the size and product range of a given producer, a typical mattress manufacturer will need to retest between 12 and 42 prototypes to meet this new arbitrary CPSIA rule.

While this rule will certainly impose new costs on manufacturers already strained by the recession, it will not improve safety. Instead, the manufacturers will simply repeat tests already conducted. This is a clear example of government action that has forced mattress manufacturers to incur additional costs and regulatory burdens with no discernable safety benefits to the consumer.

In implementing other CPSIA provisions, the CPSC has set or proposed further testing, recordkeeping and labeling requirements on mattress manufacturers that will impose other costly redundancies on the current product safety regime for mattresses, once again without offering any discernable improvement in consumer safety. For example, the CPSC has issued a proposed rule titled "Testing and Labeling Pertaining to Product Certification."[1] The two flammability standards that apply to mattresses already include rigorous testing, quality control, documentation, recordkeeping, labeling and certification requirements. Furthermore, as noted above, the record shows that the incidence and consequences of residential mattress fires have fallen substantially since the first of these standards was promulgated in the 1970s. Nevertheless, the CPSC has proposed additional testing for these products in this rule. Once again, this regulation, if adopted, would increase mattress manufacturers' costs and regulatory burdens without improving safety.

Likewise, the CPSC interprets the CPSIA to require that all mattresses be accompanied by a "certificate of conformity," which must contain manufacturer, testing and contact information. Like the other examples discussed above, this rule imposes added regulatory obligations and associated costs on the manufacturer without improving product safety. Virtually all of the information required to be on the certificate is already contained on a label that the CPSC has required on all mattresses since well before the CPSIA took effect. Furthermore, the certificate serves no safety purpose. A manufacturer must furnish the certificate to retailers and distributors, but those parties have no obligation to read or retain it. Likewise, the manufacturer must keep the certificate on file and make it available to the CPSC on request, but this new document merely references information already documented elsewhere by the manufacturer.

Other CPSIA-mandated requirements include a product safety database that will list product safety complaints that consumers send to the CPSC. While the mattress industry does not

[1] 75 FR 28336.

oppose such a database in principle, the Commission has not implemented sufficient precautions to assure that the information contained in the database is accurate. Instead, the CPSC's system may allow the posting of erroneous and possibly fraudulent data that could harm a company's reputation or result in costly litigation. The system is also vulnerable to manipulation by competitors or others submitting false or inaccurate data to the CPSC for anti-competitive or political reasons. Neither consumers nor industry are well served by inaccurate information being posted on the CPSC's database. Additional precautions are needed to address these risks.

Each of these examples of wasteful, superfluous or ill-considered regulations has resulted from the CPSC's implementation of the CPSIA. The mattress industry is far from unique in being hurt by these new rules. In combination, these requirements have imposed significant new costs on manufacturers during this current recession, impairing our industry's ability to recover from the poor economy, to expand, and to increase our labor force.

ISPA urges your Committee to use its oversight and legislative authority to encourage and (when needed) require the CPSC to undertake more balanced and nuanced rulemakings in which the agency may use its discretion to promulgate rules that take into account existing regulatory mechanisms that are working efficiently. We also think it is imperative that CPSC have the discretion to make reasoned exceptions to new statutory requirements that would otherwise impose wasteful costs without improving consumer safety.

Mattress Flammability Standards

In addition to the CPSIA-related issues identified above, the mattress industry also believes that its products are subject to duplicative flammability standards that impose additional and unnecessary costs and regulatory burdens on mattress manufacturers. As a result, ISPA has requested that the CPSC rescind a 35-year old cigarette test standard that is now outdated and redundant in light of a new mattress flammability standard that took effect three years ago. Furthermore, the way that cigarettes burn has changed substantially in recent years, making the old standard even less relevant to today's real world safety risks. Rather than rescind the redundant standard, however, the Commission has proposed to amend the old requirements to make them even more stringent.

By way of background, all new mattresses at present must meet the following flammability standards:

- 16 CFR Part 1632: Promulgated in the mid-1970s, this standard requires that a mattress resist ignition from a smoldering cigarette heat source. It requires that a mattress prototype be exposed to at least 18 ignited cigarettes that are unfiltered and meet specified dimension and tobacco density requirements.
- 16 CFR Part 1633: This standard, which became effective in 2007, requires that a mattress resist ignition from an open-flame heat source (such as a match, cigarette lighter or a candle). This test is conducted by exposing a mattress prototype to a large ignited burner that is intended to represent the type of fire that occurs when a pillow or comforter has been ignited by a candle or a child playing with matches.

Two years before Part 1633 became effective, ISPA, on behalf of the mattress industry, requested that the CPSC rescind the old Part 1632 standard because the new open-flame

standard embodied in Part 1633 made the cigarette-ignition standard redundant. Although CPSC published an Advance Notice of Proposed Rulemaking[2] requesting public comment on ISPA's request, the Commission has taken no further action.

Instead, the CPSC proposed in November 2010 to amend Part 1632 to require the use of a new cigarette developed by the National Institute of Standards and Technology (NIST).[3] The CPSC justifies its proposed action on the grounds that the fire properties of cigarettes have changed substantially in recent years with the introduction of the so-called Reduced Ignition Propensity (RIP) cigarette (also sometimes called "self-extinguishing" or "fire safe" cigarettes). The RIP cigarette is designed to stop burning when left unattended, and is intended to reduce the number of residential fires caused by smoldering cigarettes. RIP cigarettes have essentially replaced all other cigarette types sold in the United States.

RIP cigarettes are intended to address exactly the same types of fires that are the focus of Part 1632 – that is, house fires ignited by smoldering cigarettes, making Part 1632 even less relevant. Nevertheless, rather than rescind the old standard – or at least allow manufacturers to perform the Part 1632 tests using RIP cigarettes (as is now possible under the standard) – the CPSC has instead proposed that Part 1632 be amended to require the use of the new NIST cigarette noted above.

ISPA opposes this action for the following reasons:

1. Both the open-flame standard set in Part 1633 and the advent of the RIP cigarette make Part 1632 redundant (for the reasons noted above). As a result, CPSC should rescind Part 1632, not amend it.
2. In developing the new NIST cigarette, NIST deliberately selected a material that burns hotter than the non-RIP cigarettes that were in use immediately before RIP cigarettes replaced all other cigarette types. Rather than attempt to preserve the "status quo" that existed before the transition to RIP cigarettes, the CPSC proposes using a more intense test method without any evidence that this will improve product safety.
3. Even if CPSC can document that both the Part 1632 smoldering cigarette test and the Part 1633 open-flame test are needed for consumer safety (which it has not), the 1632 test should reflect today's "real world" ignition risk. Today's smoker uses the RIP cigarette, NOT the NIST product. That means, at minimum, the Part 1632 tests should be performed with the RIP cigarette, not the new and hotter NIST cigarette.
4. The NIST replacement cigarette costs considerably more (at $249/carton plus special shipping) than the price of commercially available cigarettes that are currently used.
5. The Flammable Fabrics Act (which provides the legal authority under which the CPSC administers both Parts 1632 and 1633, and which governs how 1632 may be amended) requires that CPSC justify why a given safety standard is necessary whenever that standard is amended. The CPSC has not met these requirements in proposing to amend Part 1632. Therefore, its proposed amendments to Part 1632 do not meet the applicable legal requirements.

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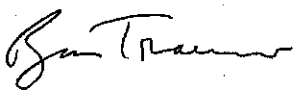
[2] 70 FR 36357.
[3] 75 FR 67047.

For these reasons we believe Part 1632 should be rescinded. Lifting this redundant standard will free up resources that mattress producers can use to expand their businesses and hire more employees.

Thank you for the opportunity to provide this information. Please contact me if you should require any further information in this regard.

Sincerely,



Ryan Trainer
President
International Sleep Products Association

Association Connecting Electronics Industries

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January 7, 2011

Representative Darrell E. Issa
Chairman, Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Chairman Issa,

IPC – Association Connecting Electronics Industries thanks you for the opportunity to provide insight on existing and proposed regulations that have negatively impacted the economy and job growth.

We would like to call your attention to three regulations that will have a significant negative impact on manufacturers, and therefore warrant oversight:

- The Environmental Protection Agency's (EPA's) proposed modifications to the **Toxic Substances Control Act (TSCA) Inventory Update Reporting (IUR) Rule** (EPA–HQ–OPPT–2009–0187). By requiring all manufacturers that recycle byproducts to report those byproducts as new chemicals, the EPA will create burdensome, costly and unnecessary regulatory requirements that penalize manufacturers for doing the right thing - recycling.
- The **EPA's reopening of the Definition of Solid Waste (DSW) rule** (EPA–HQ–RCRA–2002–0031). The EPA's decision to reopen the DSW rule, which was finalized in October 2008 to lessen regulatory burdens blocking the recycling of secondary materials, would impose significant regulatory burdens on recycling.
- The Security and Exchange Commission's (SEC's) **proposed regulations on conflict minerals** (SEC Release No. 34-63547; File No. S7-40-10). The regulations being developed by the SEC under Section 1502 of the recent Dodd-Frank Wall Street Reform and Consumer Protection Act could impose extremely burdensome reporting requirements on manufacturers, such as electronics manufacturers, that use tin, gold, tantalum, and tungsten in their products.

Our concerns regarding these regulations are detailed below. Additionally, the comments we submitted to the respective agencies on these issues are attached for your reference.

About IPC and the Electronic Interconnect Industry

IPC represents all facets of the electronic interconnect industry, including design, printed board manufacturing and electronics assembly. Printed boards and electronic assemblies are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. IPC has 1,795 member companies located in the U.S. which employ an estimated 90,000 people.

The U.S. has a competent, competitive and organized electronic interconnect industry. However, an ever increasing number of regulatory burdens placed on companies have resulted in lost business opportunities, lost revenue, lost jobs, and a dramatic consolidation of the industry. The number of U.S. companies in the electronic interconnect industry has been significantly reduced over the past twenty years.

In just the printed board industry alone, costly regulatory burdens combined with intense global competition **has resulted in a fifty percent reduction in the number U.S. PCB companies and associated high-quality U.S. jobs**. The ongoing reduction is troubling since U.S. electronics companies provide much-needed jobs in the U.S. Companies comprising the U.S. electronic interconnect industry need Congressional oversight on regulations impacting their ability to conduct business, remain viable, and keep their staff employed.

EPA's Proposed Modifications to the Toxic Substances Control Act (TSCA) Inventory Update Reporting (IUR) Rule

We strongly believe that the EPA's proposed modifications to the TSCA IUR rule warrant oversight. We are concerned that EPA has proposed a number of changes to the TSCA IUR reporting requirements that are extremely burdensome and provide no clear benefit to the public or the environment. If finalized as proposed, the rule would subvert Congress' original intent to exempt byproducts from burdensome TSCA reporting requirements. The IUR rule is intended to regulate new chemicals that are produced for a commercial intent/purpose; not byproducts. EPA's absurd interpretation that would render a byproduct a new chemical feedstock undermines Congress' intent and overreaches beyond TSCA's mandate. If the TSCA IUR rule is finalized as it currently reads, manufacturers that recycle byproducts will be required to submit costly, time-consuming reports that may be useless due to poor data quality. We strongly encourage you to conduct oversight of EPA's proposed modifications to the TSCA IUR rule to ensure manufacturers are not unduly burdened by erroneous reporting requirements.

Additionally, EPA's proposed modifications to the TSCA IUR rule raise significant timing and data quality concerns. The proposed modifications will apply to data collected in 2010, yet EPA has not finalized the reporting requirements. EPA expects to finalize the rule in May 2011 that will require reporting to begin on June 1, 2011, less than a month after the rules are promulgated. This unfeasible short period will leave manufacturers with scant time to gather the required new data or even understand the complex new reporting requirements. In addition to imposing a significant and disruptive burden on manufacturers, it is likely that the data quality will be poor

due to the extremely limited time provided for manufacturers to gather and report data. We hope that as a result of your oversight, EPA will delay the reporting requirements under the new TSCA IUR guidelines by a minimum of one year to provide a more reasonable timeframe for data gathering and reporting.

EPA's Re-opening of the Definition of Solid Waste (DSW) Rule

Congress should also conduct oversight on EPA's decision to reopen the DSW rule, a rule finalized in October 2008, due to Environmental Justice (EJ) concerns raised by environmental groups. The DSW rule was published to address multiple court decisions that EPA had overreached their authority by regulating recycled secondary materials as hazardous waste. By de-regulating secondary materials that are legitimately recycled, the DSW rule reduced regulatory burdens on manufacturers recycling secondary materials. Now, in re-opening the rule to readdress EJ issues that were already adequately addressed, EPA would greatly increase the burden on manufacturers that are recycling secondary materials. We encourage you to conduct oversight on the EPA's attempts to undermine the ability of the DSW rule to promote the recycling of secondary materials.

Proposed Security and Exchange Commission's Regulations on Conflict Minerals

While IPC supports the underlying goal of Section 1502 of the Dodd-Frank Act, which is to prevent the atrocities occurring in the Democratic Republic of Congo (DRC), we are concerned about the potential significant effects that the implementation of the regulations may have on U.S. manufacturing industries.

We are also concerned that the proposed regulations may cause unnecessary disruptions of the minerals trade, which is vital to the livelihood of the people of the DRC. In order to minimize these effects, without undermining the underlying legislative goals, IPC has recommended that the SEC allow companies the flexibility to develop appropriate due diligence measures, recognize ongoing efforts to improve the transparency of the supply chain, address the need to phase in requirements, and provide the necessary time to implement these measures.

It is important that the regulations acknowledge the realities of the situation on the ground in the DRC, the complexities of the international minerals trade, and the broad and diverse global electronics supply chain. We encourage your office to work with the SEC in an oversight capacity to ensure the development of regulations meet legislative intent without unduly burdening U.S. manufacturing.

Conclusion

Thank you for the opportunity to identify proposed and existing regulations that will be a burden to industry, job creation and the economy. We believe that the EPA's proposed modifications to the Toxic Substances Control Act Inventory Update Reporting rule, EPA's re-opening of the Definition of Solid Waste rule, and the SEC's proposed regulations on conflict minerals all would impose costly and unnecessary regulatory requirements on U.S. manufacturers in

electronics and other industries. We therefore encourage you to conduct oversight of these burdensome regulations and the implementing agencies.

We would be pleased to discuss the aforementioned issues in more detail. Fern Abrams, IPC's director of government relations and environmental policy will contact your office to schedule a meeting in the coming weeks.

Sincerely,

Dennis P. McGuirk
President

Attachments

1. Comments of the IPC – Association Connecting Electronics Industries on the SEC Regulatory Initiatives Under the Dodd-Frank Act Title XV: Miscellaneous Provisions-Section 1502 Conflict Minerals

2. Comments of the IPC – Association Connecting Electronics Industries on the TSCA Inventory Update Reporting Modifications Proposed Rule

3. Comments of IPC – Association Connecting Electronics Industries on the Definition of Solid Waste Rule

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6143

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MINORITY (202) 225–5074

www.oversight.house.gov

December 29, 2010

Denny McGuirk
IPC, The Association Connecting Electronics Industries
3000 Lakeside Drive 309 S
Bannockburn, IL 60015

Dear Mr. McGuirk,

The Committee on Oversight and Government Reform is examining existing and proposed regulations that negatively impact the economy and jobs.

In fiscal year 2010, federal agencies promulgated 43 major new regulations. These regulations ranged from new limits on "effluent" discharges to new rules for Nationally Recognized Statistical Rating Organizations. The new limits on "effluent" discharges from construction sites will cost $810.8 million annually resulting in the closure of 147 construction firms and the loss of 7,257 jobs. In total, the administration estimated the cost, often referred to as the hidden tax, of the 43 new regulations to be approximately $28 billion, the highest single year increase in estimated burden on record, resulting in thousands of lost jobs. This new burden is on top of the $1.75 trillion estimated burden of existing regulations.

As a trade organization comprised of members that must comply with the regulatory state, I ask for your assistance in identifying existing and proposed regulations that have negatively impacted job growth in your members' industry. Additionally, suggestions on reforming identified regulations and the rulemaking process would be appreciated. Please submit your response as soon as possible, preferably before January 10, 2010. If you have any questions, please feel free to contact Kristina Moore at (202) 225-5074 or via email at Kristina.Moore@mail.house.gov.

Sincerely,

Darrell Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman

Comments of

IPC – the Association Connecting Electronics Industries

on the

TSCA Inventory Update Reporting Modifications Proposed Rule

EPA-HQ-OPPT-2009-0187

October 12, 2010

1901 North Moore Street

Suite 600

Arlington, VA 22209

Table of Contents

I. Introduction and Summary of Comments

IPC – Association Connecting Electronics Industries appreciates the opportunity to comment on the Environmental Protection Agency's (EPA's) proposed rule for the Toxic Substances Control Act (TSCA) Inventory Update Reporting (IUR) Modifications (hereafter referred to as the proposed rule). IPC believes that the proposed rule will have a detrimental effect on the entire U.S. manufacturing sector, including electronics, without providing commensurate benefit to human health or the environment. IPC is seriously concerned that EPA's decision to treat byproducts sent for recycling as new commercial chemicals subject to the IUR rule because byproducts are not new chemicals intentionally manufactured for a commercial purpose. IPC is also concerned that the proposed changes to the reporting requirements are extremely burdensome and would not serve to enhance human health and environmental protection. Furthermore, the guidance documents on byproducts reporting are insufficient and will only further confuse the regulated community. IPC and its members strongly urge EPA to reconsider its interpretation that byproducts sent for recycling are subject to the IUR rule, altering the proposed burdensome reporting requirements, and improving the guidance documents to more clearly articulate the reporting requirements.

IPC, a global trade association, represents all facets of the electronic interconnection industry, including design, printed board manufacturing and electronics assembly. Printed boards and electronic assemblies are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. IPC has more than 2,700 member companies, 1,700 of which are located in the U.S. As a member-driven organization and leading source for industry standards, training, market research and public policy advocacy, IPC supports programs to meet the needs of an estimated $1.7 trillion global electronics industry.

IPC members are strong supporters of cost effective environmental protection. IPC and its members are heavily involved in a number of voluntary environmental initiatives that promote cost effective environmental protection, including several of EPA's Design for the Environment partnership projects, the development of the Electronic Product Environmental Assessment Tool (EPEAT) standard[1], and the development of a green chemistry standard through the National Standards Foundation and Green Chemistry Institute. IPC members are dedicated to enhancing environmental protection.

Byproducts should be exempt from the IUR rule. While byproducts are a direct result of non-chemicals manufacturing, they are produced unintentionally, without a separate commercial intent. IPC and its members strongly believe that Congress' original intent was to exempt most manufacturing byproducts from TSCA regulations, including the IUR rule. While byproducts sent for recycling should be exempt from reporting by the generator, any component chemical substances extracted from the byproduct and manufactured for commerce by the recycler should be reported as new chemicals under the IUR rule by the recycler. Many byproducts from industrial manufacturing operations contain valuable materials that make them attractive for recycling and reuse. For example, byproducts from printed circuit board (PCB) manufacturing contain a

[1] http://www.epeat.net/

considerable amount of copper compounds that can be extracted from the byproduct for reuse and recycling. According to EPA's flawed logic, if a generator sends a copper containing byproduct for recycling, these copper compounds become component chemical substances produced for a commercial purpose and therefore subject to IUR reporting requirements by the generator. EPA has wrongly interpreted the act of finding a useful purpose for what would otherwise be a waste product, otherwise known as recycling, as somehow changing and transforming the byproduct into an intentionally manufactured chemical. The regulatory burden imposed by this flawed interpretation creates a strong disincentive to recycle. Given EPA's overall goal of promoting recycling, EPA should strongly consider the implications of incorporating recycled byproducts under TSCA IUR. Additionally, the treatment of byproducts sent for recycling as new chemicals under the IUR rule, may have untended effects on other EPA rules. Some manufacturers may stop reporting these byproducts under other programs such as the Resource Conservation and Recovery Act (RCRA) and the Toxics Release Inventory (TRI) because they are now considered by EPA to be new chemicals. IPC strongly urges EPA to exclude the reporting of all byproducts by the generator from the IUR rule, regardless of whether they are disposed or sent for recycling.

EPA has proposed a number of changes to the reporting requirements which are extremely burdensome and provide no clear benefit to the public or the environment. Many of the proposed changes will inundate EPA with data that may not be useful or accurate. Both, the proposed elimination of the threshold for reporting processing and use data and the proposed changes in the methodology for determining whether a facility must report, will drastically increase the amount of data received. IPC believes that EPA has not clearly assessed whether all of this data is needed, nor has the Agency articulated how it will be able to efficiently and effectively utilize all of the data. If EPA collects copious amounts of data without a clear plan for how that data will be used, industry and Agency resources will be wasted. EPA should review appropriate changes, such as a reduced reporting threshold, which will provide the needed data without imposing unnecessary burdens.

The *Economic Analysis for the Proposed Inventory Update Reporting (IUR) Modifications Rule*[2] conducted by EPA inadequately estimates the burdens and costs of the proposed rule on industry. EPA has inaccurately assumed that the proposed rule will only impact chemical manufacturers and the number of reports submitted in 2011 will remain unchanged from the number of reports submitted in 2006. If EPA insists that byproducts sent for recycling are new chemicals reportable under the IUR rule, EPA must address the fact that the proposed rule will impact countless industry sectors and that the number of reports submitted will inevitably increase. EPA must revise their economic analysis to include many additional industry sectors that will be impacted by the proposed rule.

The *Instructions for the 2011 Inventory Update Reporting as Proposed in the IUR Modifications Rule*[3] guidance document does not provide the regulated community, specifically generators of byproducts, with clarity on reporting obligations. Since TSCA IUR was originally intended to regulate chemicals. If EPA insists that byproducts sent for recycling must be reported by their generators as new chemicals under the IUR rule, the guidance document should clearly detail

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[2] http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b221b2
[3] http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480b221af

reporting requirements for generators of byproducts. EPA must be extremely clear that byproducts sent for recycling are subject to reporting under the IUR rule by both the generator and the recycler.

II. Byproducts Should Not Be Regulated Under the IUR Rule

A. Byproducts Sent for Recycling Should Not Be Subject to the IUR Rule

Byproducts should not be regulated under the IUR rule. Congress originally intended to exempt byproducts under TSCA by providing broad exemptions. Most manufacturing byproducts sent for recycling meet the byproduct exclusions in 40 CFR Section 720.3(g) of the IUR regulation:

> "**Any byproduct if its only commercial purpose is for use by public or private organizations that** (1) burn it as fuel, (2) dispose of it as a waste, including in a landfill or for enriching soil, or (3) **extract component chemical substances from it for commercial purposes. (This exclusion only applies to the byproduct; it does not apply to the component chemical substances extracted from the byproduct).**" (Emphasis added.)

The act of sending a byproduct for recycling does not change the fact that Congress intended to exempt byproducts. EPA's interpretation that byproducts sent for recycling are reportable under the IUR rule subverts Congress' intent and TSCA's mandate. The IUR rule is intended to regulate new chemicals that are produced for a commercial intent/purpose. Byproducts are produced coincidentally and do not have a commercial intent. PCB manufacturers do not generate these byproduct mixtures for commercial purposes. Rather, the byproducts are unintended consequences of the manufacturing of articles. IPC does not believe TSCA's intent and mandate is to regulate byproducts as new chemicals. These arguments were made to EPA in 2007 and 2008 and can be found in the attachments. We urge EPA to exempt all byproducts, including those that are recycled, from TSCA IUR.

B. *Recycling of Byproducts Into New Chemicals Should Be Reported By the Recycler*

Although IPC does not believe byproducts sent for recycling are new chemicals reportable under the IUR rule, if EPA insists that data is needed on the recycling of byproducts, the reporting should be provided by the recycler, not the byproduct generator. In a letter from EPA to IPC on November 30, 2007[4], EPA stated, "When a **manufacturer recycles a byproduct**, the manufacturer needs to consider whether any obligations arise under TSCA…" (Emphasis added.) Manufacturers do not recycle the byproducts they generate, recyclers do. The regulation clearly states that excluding byproducts when component chemical substances are extracted from it applies to the byproduct, **not** the component chemical substances. The component chemical substances are extracted, processed, and resold on the market by the recycler and therefore, the reporting requirements should be the responsibility of the recycler. Furthermore, recyclers will have data on the processing and use of the component chemical substances that are extracted, since they would be selling the final chemical product. Recyclers should be required to report on the byproducts they recycle under the IUR rule, not the generator of the byproduct.

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[4] See Attachment C.

C. The Proposed Rule Contradicts Other EPA Regulations and Programs

The proposed rule appears to contradict other EPA regulations and programs. According to the proposed rule, if a manufacturer decides to send a byproduct for recycling they are subject to IUR reporting. The significant burden of meeting both existing and proposed additional reporting requirements creates a disincentive to recycle, which directly contradicts EPA's overall goals of promoting recycling and enhancing human health and environmental protection. Exemption of all byproducts that are recycled for the IUR rule would unify EPA's policies and send a clear message of EPA's support for recycling.

The proposed rule would impact other EPA regulations. Some manufacturers may stop reporting these byproducts under other EPA programs such as RCRA and TRI because they are now considered by EPA to be new chemicals. The inherent contradiction of simultaneously regulating byproducts as new chemicals and wastes will cause significant confusion among manufacturers in many industries and impact the data quality for multiple EPA regulations. EPA should exclude all byproducts from the IUR rule, including those that are recycled, in order for Agency regulations to be harmonized.

D. EPA Should Conduct an Environmental Justice Study of the Proposed Rule

EPA should conduct a thorough environmental justice analysis of the potential adverse impacts of this proposed rule on disadvantage communities. If the proposed rule goes into effect, the disincentive to recycle will increase the volume of materials in landfills. Landfills are typically located in disadvantage communities. Sending more materials to a landfill will have adverse impacts on the environment (air and soil contamination) and human health. All EPA agencies are required to do an environmental justice analysis of every proposed rule. IPC strongly believes that EPA has not taken into consideration the disincentive to recycle fostered by the increased cost and paperwork burdens of the proposed rule; and therefore request EPA conduct a thorough environmental justice analysis of the proposed rule.

III. Proposed Changes Impose Unnecessary Burdens

The proposed changes to the IUR reporting requirements are extremely burdensome and do not ensure enhanced human health and environmental protection. Many of the proposed changes will impose a significant reporting burden without providing a clear and compelling explanation of the need for the data. EPA should identify how the extra data they are requesting will be used and limit the required reporting to only the data needed in order to not waste industry and EPA resources.

A. The Proposed Method for Determining Whether a Facility Must Report is Burdensome

EPA's proposal to require manufacturers to report under the IUR rule if the production volume of a reportable chemical is above the threshold during any year since the last principal reporting year is unrealistic and burdensome. Generators of byproducts have not collected data on the production volumes of the component chemical substances contained within their byproducts because they

never considered themselves to be subject to TSCA IUR. Identifying and tracking the volume of each component chemical substance within each byproduct on an annual basis would require costly analysis and analytical verification of the component chemical substances within the byproducts. Analyzing the byproducts may not produce accurate determinations of the amount of each component chemical substance present in the byproduct. The byproduct generator cannot determine what component chemical substances will be extracted and in what quantities. Manufacturers should only be required to report under the IUR rule if the production volume of a reportable chemical substance is above the threshold during the principal reporting year only.

B. The Proposed Definition of "Manufacture" is Inaccurate

The proposed definition of "manufacture" improperly combines the act of manufacturing with the act of extracting. The proposed definition is:

> "[T]o manufacture, produce, or import for commercial purposes. Manufacture includes the extraction, for commercial purposes, of a component chemical substance or a complex combination of substances. When a chemical substance, manufactured other than by import, is: 1) Produced exclusively for another person who contracts for such production 2) That other person specifies the identity of the chemical substance and controls the total amount produced and the basic technology for the plant process, that chemical substance is jointly manufactured by the producing manufacturer and the person contracting for such production."

Extraction is different from manufacturing and therefore should not be included in the definition of "manufacture." According to the Webster Dictionary[5], manufacture is defined as:

> "[T]he operation of making wares, or any products by hand, by machinery, or by other agency. **Anything made from raw materials** by hand, machinery, or by art." (Emphasis added.)

Extraction, according to the Webster Dictionary[6], is defined as:

> "To draw out or forth; to pull out; to remove forcibly from a fixed position, as by traction or suction."

Manufacturing deals with making a new entity from **raw materials**; it does not encompass removing something from a product or chemical mixture. If EPA considers it necessary to collect data on extracted chemical substances, they should state that the person doing the extracting is required to report under the IUR rule. EPA should remove all references to "extraction" from their proposed definition of "manufacture."

C. Proposed Changes to Increase Data Collected are Burdensome and Unnecessary

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[5] http://www.webster-dictionary.net/definition/manufacture
[6] http://www.webster-dictionary.net/definition/Extract

The proposed changes to eliminate the 300,000 lb. threshold for requiring processing and use data and increase the reporting frequency are burdensome and unnecessary. The extra data EPA would receive will require expeditious analysis of the data by the Agency in order to have an immediate, direct benefit to the public. EPA has not stated whether additional staff will be hired in order to analyze and evaluate the copious amounts of data that will be submitted. If EPA cannot rapidly expedite the data analysis to the public then more frequent data collection will represent a burden to industry with no commensurate benefit to society. EPA should gather data that is needed for specific purposes and programs, rather than requesting a vast data set from which the Agency may pick and choose pieces for undefined future uses. EPA should not increase the reporting frequency or eliminate the 300,000 lb. threshold for reporting processing and use data.

D. The Proposed Rule Requires Duplicative Reporting

The proposed rule violates the Paperwork Reduction Act (PRA) by requiring duplicative reporting. According to the PRA, the proposed rule cannot require data to be reported that is already collected through other agencies. The proposed IUR rule requires manufacturers to report worker exposure data — information that the Occupational Safety and Health Administration (OSHA) currently collects through existing regulations and standards. At a minimum, EPA must explain how their data needs cannot be met with the OSHA data on worker exposures. Under EPA's interpretation that byproducts are new chemicals reportable under the IUR rule, many data elements would be reported by the recycler of the byproduct as well as the generator of the byproduct. EPA should only require recyclers of byproducts to report under the IUR rule in order to avoid duplicative reporting. EPA should reevaluate the data elements they are proposing to collect to ensure duplicative reporting does not occur among Federal agencies and industry.

E. The Timing of This Rulemaking is Extremely Late; 2010 Data Should Not Be Reported

EPA should change the reporting year to 2011 since the Agency has yet to finalize reporting requirements. Requiring manufacturers to go back and gather data will cause significant data quality issues because of unreliable estimates. Since manufacturers did not know at the beginning of 2010 what data they should be collecting in order to comply with the IUR rule, they will be forced to estimate data elements that were not required during the last reporting cycle. Manufacturers that never reported under the IUR rule will be forced to estimate all data elements required to be reported. For example, manufacturers that produce chemicals below 300,000 pounds per year will face a host of new processing and use data requirements under the proposed rule. Although postponing the submission period to a later four-month period in 2011 would be helpful to give manufacturers more time to gather data, it will not solve data quality issues. To avoid potential data quality issues, EPA should strongly consider postponing the reporting year to 2011 with reports due in 2012.

F. Mandatory Electronic Reporting is Unreasonable and Could Cause Legal Complications

Electronic reporting should not be mandatory. There are significant timing, reliability, and legal issues with requiring all manufacturers to submit IUR reports electronically. EPA will have limited time to develop and test the software since the reporting period will begin, at best, only a few months after a final rule is published. EPA must also train their staff on how to use the software and assist manufacturers that may have difficulties using the software. With the increased number of manufacturers likely to report under the IUR rule, EPA will need to ensure the electronic reporting system can handle the massive increase in the number of reports. Mandatory electronic reporting leaves no other legal way for manufacturers to comply with the law if the electronic reporting system does not function properly. Due to the limited amount of time EPA has to guarantee the functionality and reliability of the electronic reporting system so that all manufacturers can comply with the law, EPA should not require electronic reporting for the 2010 IUR reporting year.

IV. The Economic Analysis Is Inaccurate Due to Reliance on False Assumptions

The *Economic Analysis for the Proposed Inventory Update Reporting (IUR) Modifications Rule* relies on several false assumptions that result in a significant underestimation of the burden and costs to industry. The methodology discussion in Section 4, *Industry Burden and Cost Estimates,* identifies only chemical companies as affected entities. Based on EPA's interpretation that byproducts sent for recycling are new chemicals reportable under the IUR rule, the economic analysis of the proposed changes to the IUR rule must address the wide range of industries that manufacture byproducts in order to accurately estimate the burden of the proposed rule. EPA must identify all affected industries, facilities that will be reporting for the first time, and the additional burdens imposed by the changes in the reporting requirements. If the entire economic analysis is based on the assumptions that the revised IUR rule will only impact chemical manufacturers and that the number of reports submitted will not increase, all estimations and predictions are misleading or wrong. EPA must redo the economic analysis to incorporate all affected industries, not just chemical manufacturers, and the likelihood of an increase in the number of reports submitted.

A. EPA Underestimates the Burden for Providing Manufactured Production Volumes

EPA underestimates the burden on manufacturers to provide manufactured production volumes. The estimated burden of 1.5 hours may be accurate for chemical manufacturers, but it greatly underestimates the burden to many byproducts generators who would be reporting for the first time if EPA insists that byproducts sent for recycling are new chemicals reportable under the IUR rule. Many manufacturers reporting under the IUR rule for the first time in 2011 have not been collecting data on production volumes. Many electronics manufacturers have never considered the byproducts they generate to be new chemicals and therefore have not been collecting and tracking the production volume of each component chemical substance which may or may not be recovered from their byproducts. Determining the volume for each component chemical substance will require labor and analytical testing. For example, each container of electronics manufacturing byproducts contains different concentrations of component chemical substances. It would take considerably longer than 1.5 hours for electronics manufacturers to determine the production volume of each component chemical substance in all the byproducts recycled in a single year. EPA's estimate of the total burden for providing production volumes is not even close to being appropriate for all affected industries and must be recalculated.

B. EPA Should Not Assume the Number of Reports in 2011 Will Not Change From 2006

EPA makes an extremely poor assumption (page 4-10) that the baseline number of reports submitted will not change from the 2006 submissions. If the proposed rule is enacted as it currently reads, hundreds of manufacturing facilities that never previously reported under the IUR rule will be required to report. Additionally, there are several proposed changes to the IUR rule that will cause an increase in the number of reports submitted during 2011. Eliminating the 300,000 lb. threshold for processing and use data will increase the number of full reports submitted in 2011. Proposed changes in the methodology for determining if a manufacturer is required to report will also cause an increase in the number of reports submitted. Estimates EPA made on the burden and cost to industry that were based on 2006 submissions are inaccurate and should be recalculated.

C. EPA Does Not Adequately Assess the Burden of Collecting and Reporting Processing and Use Data

EPA's assumptions on the burden for reporting detailed processing and use data is grossly underestimated. For electronics manufacturers, the task to determine if reporting is required is neither simple nor straightforward because the component chemical substances within the byproducts they produce will vary from batch to batch. In the same regard, reporting processing and use data for the component chemical substances within the byproducts would be speculative and most likely inaccurate. Processing and use of the component chemical substances is determined by the recycler and typically proprietary. In most instances, the recycler will know the processing and use information of the chemicals; therefore, the reporting requirements should be the responsibility of the recycler. EPA should recalculate the expected burden on industry to provide processing and use data to include manufacturing sectors that recycle their byproducts and were never subject to the IUR rule in the past.

V. The Instructions for 2011 Inventory Update Reporting as Proposed in the IUR Modifications Rule Guidance Document is Confusing and Inconclusive

The *Instructions for 2011 Inventory Update Reporting as Proposed in the IUR Modifications Rule* guidance document is confusing and inconclusive because it does not provide clear, uniform guidance on byproducts reporting and contradicts reporting requirements put forth in the proposed rule. EPA should ensure that the guidance documents provided are clear, straightforward, and align with the proposed changes to the IUR rule.

A. EPA's Explanation of Byproducts Reporting is Unclear

In the guidance document, EPA does not clearly state that byproducts sent for recycling are subject to the IUR rule. The definition of an IUR reportable chemical does not include byproducts sent for recycling. The definition in the guidance document states that an IUR reportable chemical is:

> "[A] chemical substance that is domestically manufactured or imported into the US, is listed on the TSCA Inventory, and is not exempted by 40 CFR 711.6 in TSCA."

Electronics manufacturers do not consider the byproducts or the component chemical substances contained within byproducts as, "a chemical substance that is domestically manufactured or imported into the U.S." If EPA insists that byproducts sent for recycling are new chemicals reportable under the IUR rule, EPA should require the recycler to report the component chemical substances extracted from the byproduct.

IPC has repeatedly requested clarification of the Agency's byproduct reporting guidance. IPC and its members strongly encourage EPA to issue broad guidance on byproducts reporting rather than trying to evaluate thousands of byproducts produced by hundreds of processes in dozens of industries on an individual basis. EPA would be undertaking a huge task if every manufacturing byproduct needed to be individually evaluated to determine whether it was reportable under the IUR rule. Since 2007, IPC has sent several letters and met with EPA on multiple occasions requesting a clear and logical explanation of why all byproducts should not be excluded from the IUR rule.[7] IPC has also asked EPA to provide examples of a byproduct that would be exempt from TSCA IUR other than by disposal. In other words, **we request examples of byproducts that meet the byproducts exclusion in 40 CFR 720.3(g)(3)**. EPA should include these examples in the guidance document to assist generators of byproducts in determining whether they are obligated to report under the IUR rule. EPA must provide clear guidance on byproducts reporting that addresses the issue broadly to cover all byproducts, rather than on an individual basis.

The guidance document is confusing because it references contradictory definitions of byproducts. EPA should always refer to the definitions in 40 CFR Section 704.3[8] in order to provide consistent definitions to the regulated community. Section 2.1.1.2 of the guidance document, *Byproducts and Impurities*, states that byproducts:

> "[A]re **produced for the purpose of obtaining a commercial advantage** because they are part of the manufacture of a chemical product for a commercial purpose." (Emphasis added.)

However, in 40 CFR 704.3 byproducts are defined as:

> "[A] chemical substance **produced without a separate commercial intent** during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s)." (Emphasis added.)

The definition in the guidance document states that byproducts are intentionally produced while the definition in 40 CFR Section 704.3 states that byproducts are coincidentally produced. The definition of byproducts in the proposed IUR rule and corresponding guidance should exactly match the definitions currently under 40 CFR Section 704.3 of TSCA.

B. *The Guidance Document Confuses the Definition of "Manufacture for Commercial Purpose"*

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[7] The attachments contain correspondence letters between IPC and EPA's Office of Pollution Prevention and Toxics.
[8] Title 40 Protection of Environment Chapter 1 Environmental Protection Agency Part 704 Reporting and Recordkeeping Requirements. http://www.access.gpo.gov/nara/cfr/waisidx_05/40cfr704_05.html.

The definition of "manufacture for commercial purpose" in the guidance document is likely to confuse readers. EPA contradicts itself by first stating that "manufacturing for a commercial purpose/advantage" is intentional and then stating that "manufacturing for a commercial purpose/advantage" is coincidental. On page 2-3 of the guidance document, EPA first states that the term "manufacture for commercial purpose" means "that the chemical is **produced for the purpose** of obtaining a commercial advantage." (Emphasis added.) As EPA does not define commercial advantage, determining whether a manufacturer is obtaining a commercial advantage from the manufacture of a chemical creates ambiguity through its subjectivity. Later on page 2-3, EPA references 40 CFR Section 704.3 noting, "chemicals that are **produced coincidentally** during the manufacture, processing, use, or disposal of another substance or mixture, including both byproducts that are separated and impurities that remain in a substance or mixture." (Emphasis added.) The guidance document does not help manufacturers determine whether a chemical is manufactured for a commercial purpose because the two definitions referenced on page 2-3 are contradictory. EPA should only refer to the definitions in 40 CFR Section 704.3 of TSCA to avoid confusion and ambiguity.

C. *The Method for Determining Whether a Facility Needs to Report Contradicts the Proposed Rule*

The portion of the guidance document that discusses the method for determining whether a facility is required to report under the IUR rule contradicts the proposed rule. The guidance document states that manufacturers are required to report if the chemical is produced above the 25,000 lb. threshold in the principal reporting year. The proposed rule states that:

> "the proposed method [for determining whether a facility must report] would be to determine whether, **for any calendar year since the past principal reporting year**, a chemical substance was manufactured (including imported) at a site in production volumes 25,000 lbs. or greater…If the **production volume** for a reportable chemical substance **were 25,000 lbs. or greater for any calendar year during the 4-year period [2006-2010]** then it would be **necessary to report** the chemical substance unless it were otherwise exempt" (pg. 49633). (Emphasis added.)

On page 1-3 of the guidance document in Table 1-1 *Who is Required to Report* it states that manufacturers of chemical substances over 25,000 lbs. per site per year are required to report if the production volume of a chemical substance met or exceeded the 25,000 lb. threshold during the principal reporting year. Also, the second example in Table 2-3 on page 2-13 further contradicts the proposed rule. The example states that Company B has one manufacturing site, which manufactured 26,000 lbs. of Chemical X in 2009 and 20,000 lbs. of chemical X in 2010. The reporting requirement stated in the table is that Company B is not required to report for Chemical X because it manufactured less than 25,000 lbs. of Chemical X in 2010. In order for the guidance document to be effective in assisting manufacturers in submitting IUR reports, it must be consistent with the proposed rule.

VI. Conclusion

IPC and its members strongly urge EPA to exclude all byproducts, including those that are recycled, from reporting under the IUR rule because they do not serve a commercial purpose. If EPA maintains their interpretation that byproducts sent for recycling are new chemicals reportable under the IUR rule EPA will discourage recycling and may negatively impact other EPA programs by generating confusion about the reporting status of byproducts. If EPA determines that data is needed on byproducts sent for recycling then EPA should require the recycler to report under the IUR rule, not the generator. IPC also encourages EPA to review the proposed changes to the reporting requirements to ensure minimal resources are expended by industry and EPA to obtain only the data that is needed. In reevaluating the impact of the proposed rule on generators of byproducts, we expect EPA to recalculate the burden and costs to industry and modify their guidance documents to adequately guide the regulated community.

Attachments

Attachment A – Letter from IPC to EPA staff, Robert Lee dated March 12, 2007
Attachment B – Letter from IPC to EPA staff, Robert Lee dated July 20, 2007
Attachment C – Letter from EPA staff, Robert Lee to IPC dated November 30, 2007
Attachment D - Letter from IPC to EPA staff, Robert Lee dated December 11, 2007
Attachment E – Letter from IPC to EPA staff, Robert Lee dated February 12, 2008

Comments

of

IPC – The Association Connecting Electronics Industries

on the

Definition of Solid Waste Rule

EPA-HQ-RCRA-2009-0315

AUGUST 13, 2009

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ARLINGTON, VA 22209

IPC- the Association Connecting Electronics Industries believes that the EPA has carefully balanced the promotion of recycling through the removal of regulatory barriers with necessary protections of the environment, thus offering strong environmental benefits with limited impact to society. We therefore urge the EPA to deny the Sierra Club's petition to reopen the Definition of Solid Waste (DSW) rule.

IPC is a global trade association representing over 2,700 member companies, approximately 75 percent of which are in located in the United States. IPC represents all facets of the electronics interconnect industry, including design, printed circuit board manufacturing and electronics assembly. Printed circuit boards and electronic assemblies are used in a variety of electronic devices including cell phones, computers, pacemakers, automobiles, and sophisticated missile defense systems. Although IPC members include electronic giants, sixty percent of IPC members are small businesses. The typical IPC member has one hundred employees and a profit margin of less than four percent.

IPC believes the DSW rule is an important step towards more fully realizing the resource conservation goals of RCRA. EPA's analysis indicates that over two thousand industrial facilities are expected to switch from disposal to recycling under the provisions of this rule. In particular, the transfer-based exclusion provides an important and significant opportunity for increasing the recycling of secondary materials.

IPC believes that the rule strikes a delicate and appropriate balance between removing regulatory barriers in order to encourage recycling and EPA's mandate to maintain environmental protections. Contrary to the Sierra Club's characterization of the 2008 DSW rule as a "Midnight Rule," the EPA staff has been working on the definition of solid waste since the early 1980's. EPA has amassed a significant and thorough docket to support the provisions selected, including transfer-based exclusions, codification of mandatory and for-consideration criteria for legitimacy, and notification requirements. Through selection of these protective requirements to prevent impacts to human health, EPA has addressed the issue of environmental justice, as there can be no disparate negative impacts if there are no negative impacts. We believe that EPA should not contradict its previous judgment by reopening the rule, nor should it entertain additional provisions which would overregulate the excluded materials.

IPC appreciates the opportunity to offer these Comments in support of the DSW Rule.

I. General Comments

In 1976 when Congress passed RCRA, it was directed at addressing very real environmental concerns related to improper releases of hazardous materials. The rule's stated intent was not only to prevent improper management of hazardous waste, but to encourage material reuse and recovery:

> "As originally conceived, RCRA was designed primarily as a system of controls over the management of wastes in this country, with two fundamental mandates: protect human health and the environment, and conserve resources." [1]

Over the years, a number of independent published studies, summarized in EPA's Regulatory Impact Analysis[2], identified the RCRA regulatory structure as a barrier to recycling. In 1999, the Energy & Environmental Research Center found, "Regulatory barriers result from the EPA RCRA designation [coal combustion byproducts] as solid wastes even when they are utilized rather than disposed of. In the absence of special approval and permitting procedures that discourage the use of coal combustion byproducts because of cost and the time required to complete adjudicatory processes."[3]

In 1995, the Reason Foundation stated,

> "So whatever recycling is, RCRA applies to it and doesn't apply to virgin materials used as commercial products - even though recycling operations are already subject to the same environmental regulations as comparable activities using virgin materials, like the Clean Air Act, the Clean Water Act, the Occupational Safety and Health Act, Superfund, and the Emergency Planning and Community Right to Know Act, and the Toxic Substances and Control Act. Many perfectly acceptable and reusable (and regulated) raw materials - salts of heavy metals, acids, toxic solvents, water-reactive material, and so on - become RCRA hazardous wastes the moment they are 'discarded,' whatever that means, which virtually guarantees that few people will recycle them....The EPA's distinctions are important because they affect all recycling operations - and sometimes they destroy the incentive to recycle instead of throw away."[4]

In EPA's July 2003 publication, *Beyond RCRA, Waste and Materials Management in the Year 2020*, EPA recognized the need for reform stating,

> "Creating a system truly oriented towards efficient use of resources could also require fundamental changes ... so that materials now considered wastes would be seen, whenever possible, as commodities with potential uses. One approach to making such a system work would be to identify materials as "wastes" only when they are clearly destined for disposal; ... that is "materials management" rather than "waste management." Reducing distinctions between wastes and materials

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[1]Beyond RCRA, Waste and Materials Management in the Year 2020, US EPA, Office of Solid Waste, EPA530-R-02-009, April 2003.

[2] Regulatory Impact Analysis, USEPA's 2008 Final Rule Amendments to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste, September 25, 2008.

[3] EERC, Barriers to the Increased Utilization of Coal Combustion/Desulfurization By=Products by government and Commercial Sectors – Update 1998, EERC Topical Report, July 1999.

[4] The Reason Foundation, "Recycling Hazardous Waste: How RCRA Has Recyclers Running Around in CERCLAS, October 1995.

could dramatically improve recycling and reuse rates and, therefore, make great contributions towards conservation of resources."[5]

II. The DSW Rule Provides Important Environmental Benefits

We believe the 2008 DSW rule represents an essential step in enabling EPA to move toward a future where the focus of RCRA is on resource conservation. Under the rule, secondary materials that would be considered hazardous waste if discarded will increasingly be recycled, reclaimed, and otherwise beneficially re-used. EPA's Regulatory Impact Analysis (RIA)[6] estimates that in addition to providing valuable economic benefits to the beleaguered manufacturing sector, over 2,400 industrial facilities are expected to switch from disposal to recycling, resulting in the diversion of over 20,000 tons per year of waste from landfills into beneficial reuse. By reopening the rule, EPA would be delaying the significant benefits identified in the RIA.

Metal sludge, created through the treatment of wastewater from the electroplating of printed circuit boards and other items, is one of the secondary materials that will more commonly be recycled under the provisions of DSW. Electroplating wastewater treatment sludge represents one of the largest sources of untapped metal-bearing secondary material in the United States. As a result of the cost of recycling under RCRA hazardous waste regulations, landfilling has been the dominant choice for final disposal of electroplating sludge.[7] This sludge often contains metals at a concentration that is significantly higher than that occurring in nature. For example, copper ore normally contains less than one percent copper, whereas copper sludge from the printed circuit board industry averages 10 to 15 percent copper. However, because landfilling is generally less expensive than metals recovery under RCRA hazardous waste regulations, most metals-rich sludge has been landfilled, wasting valuable resources.

Under the restrictions allowing recycling only by heavily regulated RCRA Treatment, Storage and Disposal facilities, very few companies have undertaken the recycling of electroplating sludge, creating monopoly-like conditions and monopolistic prices. The transfer-based exclusion in the DSW rule empowers the marketplace to create new and cost-effective recycling options that produce the win-win situation of reducing the mining of virgin metals and saving money.

Suppliers of etching solutions are a potential new recycler of electroplating sludge from PCB manufacturers. However the need to become a RCRA-permitted Treatment, Storage and Disposal Facility (TSDF) in order to perform recycling under EPA's RCRA hazardous waste regulations has deterred these facilities from pursuing this type of copper recycling. When electroplating sludge is mixed into spent etchant, the residual acid or alkaline content in spent etchant dissolves the electroplating sludge to produce the same dissolved copper compounds as the spent etch contains. Under current RCRA regulations, etchant suppliers have not been interested in receiving this mixture, as it would require them to operate under costly and

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[5] Beyond RCRA, Waste and Materials Management in the Year 2020, US EPA, Office of Solid Waste, EPA530-R-02-009, April 2003.

[6] Regulatory Impact Analysis, USEPA's 2008 Final Rule Amendments to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste, September 25, 2008.

[7] EPA Common Sense Initiative, Metal Finishing Sector, Workgroup Report: F006 Benchmarking Study, September 1998. Available from the at National Metal Finishing Resource Center at http://www.nmfrc.org/pdf/f006fin.pdf

burdensome TSDF regulations. Under the DSW rule, this combined mixture could be shipped to the etchant supplier for recycling, allowing the PCB manufacturer to eliminate separate shipments of electroplating sludge and etchant.

III. The Transfer-Based Exclusion is a Critical Part of the DSW Rule

The transfer-based exclusion provides the greatest opportunity for increasing the recycling of secondary materials. As the Regulatory Impact Analysis makes clear, 92% of the cost savings from the DSW rule are expected to be realized at facilities using the transfer-based exclusion, at a value of over $87 million per year. Many of the secondary materials produced in the electronics interconnect and other manufacturing sectors are most efficiently recycled or reclaimed by manufacturers of other products or goods. Economies of scale, along with differing input needs, allow manufacturers in one sector to make efficient use of secondary materials produced by another manufacturing sector. Because the generator of secondary materials views them as such, they do not retain control of these materials, but provide them to other companies whose recycling and reclamation processes lay outside their line of business. By excluding materials manufactured by one company and transferred to another company for recycling or reclamation from RCRA hazardous waste regulations, this rule will greatly increase the opportunity and likelihood that secondary materials will be recycled.

Repealing the transfer-based exclusion, returning to the anachronistic NAICS code system as proposed in 2003, or limiting the exclusion to situations where the generator is paid for the secondary materials, or any combination thereof—all options proposed by EPA—would render the DSW rule effectively meaningless. We strongly urge EPA not to take any of these actions.

Similarly, we urge the EPA not to repeal the provisions under the transfer-based exclusion applicable to intermediate facilities. Not only has the EPA required the same strict management conditions for intermediate facilities to ensure legitimate, recycling as it did for reclamation facilities, this provision is necessary for many of the small business entities that do not generate enough secondary materials at one time to make recycling economically effective. EPA recognized this in the preamble to the rule stating,

> "We believe that such facilities make it easier for generators that generate smaller quantities of hazardous secondary materials to send these materials for reclamation and that storage at such facilities under the conditions designed to address discard is completely consistent with handling the hazardous secondary materials as valuable commodities." [8]

Repealing this provision would have a large, and unforeseen, impact on the ability of many; otherwise legitimate generators, especially small businesses, to use the exclusion.

IV. Legitimacy Criteria

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[8] 73 Fed. Reg. at 64730

As EPA recognizes, the four criteria as promulgated "*are substantively the same as the existing legitimacy policy.*"[9] EPA's codification of both mandatory and for-consideration criteria as promulgated has the benefit of promoting national consistency while providing enough flexibility to address individual circumstances. Moreover, as EPA notes in the preamble to the DSW rule, "*it is well understood throughout the regulated community*" that all recycling must be "legitimate," and any recycling that is not, is "discarded" and subject to RCRA Subtitle C regulation. None of these principles have changed, and re-opening the rule to turn the two non-mandatory legitimacy criteria into mandatory criteria serves no beneficial purpose, and would come at a significant cost.

For example, while economic factors may be used to establish the usefulness of the secondary material to the recycling process, variations in the prices of transportation, recycled materials and raw materials, render the requirement to meet a specific economic test inappropriate. Furthermore, as is the case under the current regulatory scheme, recycling a material may be more costly than disposal. Nonetheless, a company, wishing to lessen its environmental footprint, may choose to pay for recycling. This decision should not be deemed to render the recycling illegitimate. Requiring that recycling always result in positive payments to the generator would inappropriately shift the focus of the regulation to economic factors, as opposed to environmental ones.

The requirement that a product not contain significant levels of toxic constituents as compared to analogous products, if rigidly implemented, could result in missed recycling opportunities that do not constitute a risk to human health or the environment. In some cases, products made from recycled materials may contain higher levels of hazardous constituents than those made from virgin materials. Because of the importance of recycling and reusing materials, a case-by-case evaluation as to the significance of the hazardous constituents, given particular focus to the risk presented by the product may be most appropriate.

V. EPA Does not Need to Further Define Contained

The Sierra Club petition argues that the terms "contained" and "significant release" are impermissibly vague. On the contrary, EPA has clearly identified the applicable performance standard for determining when material is contained stating,

> "Generally, such material is ''contained'' if it is placed in a unit that controls the movement of the hazardous secondary material out of the unit and into the environment."[10]

The EPA further states,

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[9] *See* 73 Fed. Reg. 64,708 (Oct. 30, 2008).

[10] 73 Fed. Reg. at 64681.

> "A hazardous secondary material is ''contained'' if it is placed in a unit that controls the movement of that material out of the unit. This requirement is consistent with the idea that normal manufacturing processes are designed to use valuable material inputs efficiently rather to than allow them to be released into the environment." [11]

EPA should not, as suggested in their federal register notice, further define "contained." If EPA takes this path, it will change the concept of contained from a way of identifying materials that have not been discarded to an inappropriate regulatory condition on material that is that it has already determined is not discarded.

In the preamble to the rule, EPA stated that,

> "After evaluating these comments, the Agency has decided not to add performance standards or other requirements for managing hazardous secondary materials excluded under any of the exclusions promulgated today (§§ 261.2(a)(2)(ii), 261.4(a)(23), or 261.4(a)(24)). Such detailed measures are unnecessary for hazardous secondary materials that are handled as valuable products that are destined for recycling. Under today's rule, regulatory authorities can determine whether such materials in a unit are contained by considering all such site-specific circumstances. For example, local conditions can greatly affect whether hazardous secondary materials managed in a surface impoundment are likely to leak and cause damage, and, therefore, whether the unit could be considered contained. Similarly, facilities may employ such measures as liners, leak detection measures, inventory control and tracking, control of releases, or monitoring and inspections. Any or all of these practices may be used to determine whether the hazardous secondary materials are contained in the unit."[12]

We agree with EPA's analysis and urge the agency not to change its well thought-out position. However, should the agency feel the need to further clarify what it means by contained, we encourage the agency to provide clarification through guidance.

VI. Notification

The notification requirement is sufficient as structured and already enforceable under RCRA. Facilities will comply with the notification provisions whether they are a condition of the exclusion or not. Failure to do so would constitute a violation of RCRA notification provisions and subject the facility/operation to an enforcement action.

VII. Environmental Justice

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[11] 73 Fed. Reg. at 64703.

[12] 73 Fed. Reg. at 64729.

Environmental Justice is an important issue affecting all Americans. For many years, economically disadvantaged Americans served as the proverbial canary in the coal mine, alerting America to the dangers posed by misuse of environmental resources. Happily, with the creation of the EPA, protection of all Americans is now a foremost goal of the EPA.

In the many years during which this rule was developed, EPA carefully studied the history of environmental damage associated with waste management and developed appropriate controls to prevent further damage under the conditions of this rule.

As discussed in chapter 11 of the RIA[13] which addresses countervailing risks and demonstrates how the rule protects against the risks identified by the damage cases studied by EPA, EPA concluded that:

> "As displayed at the bottom of Exhibit 11C, this comparison (i.e., gap analysis) reveals that the DSW final rule conditions address the damage causes for all three exclusions, which suggests a high level of protection from future recycling operation-related damages to the environment and human health. Furthermore, most all exclusions have three or more protective conditions which address each of the five known primary causes of historical recycling damages."

Because the rule has been designed to prevent environmental damage and associated impacts to human health, EPA, as stated in the response to comments, believes there are no disproportionate impacts on disadvantaged populations.

> "As explained in Chapter 11 of the Regulatory Impact Analysis found in the docket to today's rule, EPA has performed an assessment of potential countervailing risks and has determined that the conditions included in the rule address those potential risks and no net impact is expected. Thus, overall, no disproportionate impacts to minorities or low income communities are expected."

Therefore, EPA has already conducted appropriate analysis of environmental justice issues.

In fact, implementation of this rule may have a beneficial impact on minority and disadvantaged communities, as some quantities of secondary materials are expected to be diverted away from disposal facilities, often located in minority and disadvantaged communities.

IPC therefore urges EPA to conduct any additional analysis supporting the rule as expediently as possible so as not to further delay the environmental benefits of this rule.

VIII. Conclusion

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[13] Regulatory Impact Analysis, USEPA's 2008 Final Rule Amendments to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste, September 25, 2008.

IPC believes that, with the DSW rule, EPA has taken an important step towards relieving unnecessary regulatory burdens on the manufacturing sector while at the same time furthering its mission of protecting the environment and human health by encouraging increased recycling.

We urge EPA to reexamine the strong regulatory record it has amassed in support of this carefully calibrated rule and deny the Sierra Club's petition to reopen the Definition of Solid Waste Rule.

Comments on SEC Regulatory Initiatives Under the Dodd-Frank Act Title XV: Miscellaneous Provisions- Section 1502 Conflict Minerals (P.L. 111-203)

IPC-Association Connecting Electronics Industries

November 22, 2010

Table of Contents

I. Executive Summary

IPC – Association Connecting Electronics Industries is writing to articulate issues and concerns that we believe should be addressed by the Security and Exchange Commission (SEC) during the upcoming rule-making process mandated under Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter financial reform bill).

IPC, a U.S. headquartered global trade association, represents all facets of the electronic interconnect industry, including design, printed board manufacturing and electronics assembly. Printed boards and electronic assemblies are used in a variety of electronic devices that include computers, cell phones, pacemakers, and sophisticated missile defense systems. IPC has over 2,700 member companies. As a member-driven organization and leading source for industry standards, training, market research and public policy advocacy, IPC supports programs to meet the needs of an estimated $1.7 trillion global electronics industry.

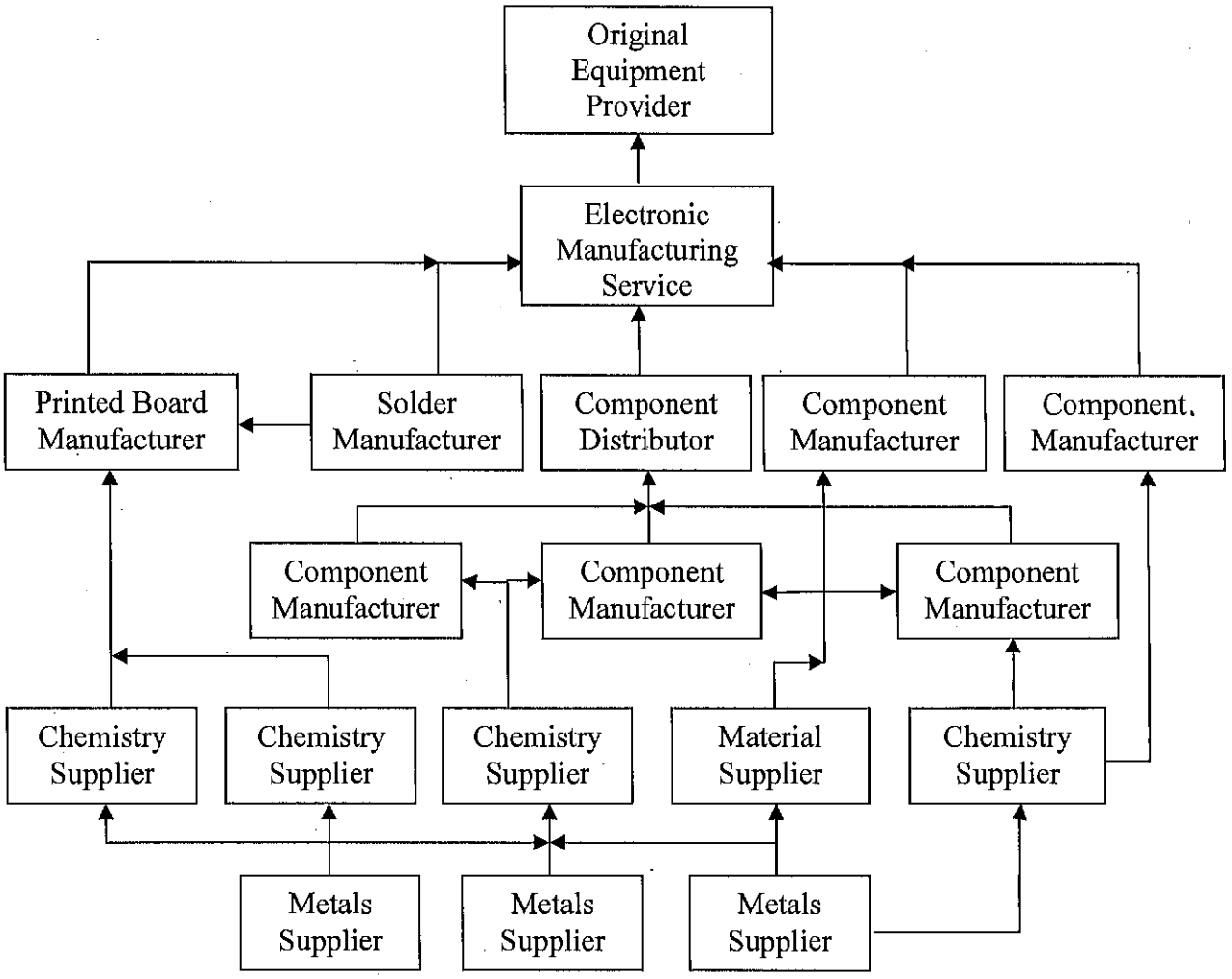
IPC supports the underlying goal of Section 1502, which is to prevent the atrocities occurring in the Congo. We understand that those perpetrating the atrocities are obtaining funding from the minerals trade and that the aim of Section 1502 is to cut off this funding. The electronics industry, including IPC members, is actively involved in a number of initiatives that seek to improve control and transparency in the mining and refinement of conflict minerals.

IPC encourages the SEC to implement the requirements of Section 1502 in a manner that supports the goals of the statute without unduly burdening U.S. manufacturing industries or causing unnecessary disruptions of the minerals trade, which is vital to the livelihood of the people of the Democratic Republic of Congo (DRC). We are concerned about the potential significant and unintended effects that the implementation of the regulations may have. In order to minimize these effects, IPC recommends that the SEC allow companies the flexibility to develop appropriate due diligence measures, recognize ongoing efforts to improve the transparency of the supply chain, address the need to phase in requirements, and provide the necessary time to implement these measures. It is important that the regulations acknowledge the realities of the situation on the ground in the DRC, the complexities of the international minerals trade, and the broad and diverse global electronics supply chain.

II. Description of Industry and Supply Chains

Supply chains in the electronics industry are extremely complex. At each step of the chain there are multiple suppliers, which are often located around the globe. *Figure 1* provides a very simple version of the global electronics supply chain. Most printed board assemblies contain dozens of components, often from several or more suppliers. Some complex printed board assemblies contain hundreds of components.

Figure 1
Simplified Electronics Supply Chain



DOWNSTREAM SUPPLY CHAIN

UPSTREAM SUPPLY CHAIN
Smelter, Mines, Comptoirs, Negociants etc.

At the most downstream position in the supply chain is the Original Equipment Manufacturer (OEM). This is the company responsible for specifying, marketing, and distributing the product. The OEM's name is on the product. Some OEMs assemble or manufacture the final product internally, but the majority of OEMs outsource manufacturing to an Electronics Manufacturing Services (EMS) provider or contract manufacturer.

The EMS firm is often responsible for all manufacturing of the product sold by the OEM. In some cases, the OEM is responsible for subassembly design, for example a disc drive or memory card in a laptop computer, but in many cases, the OEM specifies all parts in the product through an Approved Supplier List (ASL). One of the key manufacturing steps carried out by the EMS is to attach *components* to *printed boards* with *solder*. Although each of these italicized items contains conflict minerals, the EMS typically does not control selection of suppliers or materials sources. The U.S. EMS industry has annual revenues of approximately $43 billion.

Component manufacturers manufacture a broad variety of electronic components including *integrated circuits (chips), connectors, capacitors, batteries,* etc. Many of these products contain one or more conflict minerals. EMS firms may obtain components directly from component manufacturers or from component distributors.

Printed Board (PB) manufacturers manufacture bare *printed boards*. The U.S. PB industry is approximately a $3.1 billion per year industry. Many *printed boards* are finished with tin surface finishes. A number of printed boards also contain gold plating for specific electrical connections.

Solder manufacturers formulate and sell bar and paste *solder* to EMS firms for use in soldering *components* to *printed boards*. Almost all *solders* today contain significant levels of tin.

Chemical suppliers formulate and sell chemistry for gold and tin plating of *printed boards*.

Metals suppliers provide tin, gold, tantalum, and tungsten to chemical suppliers, component manufacturers and solder manufacturers.

While many members of the supply chain are large companies, some are very small companies with little leverage over their suppliers, let alone their suppliers' suppliers.

III. Establishing a Minerals Chain of Custody is Nearly Impossible for an Electronics Manufacturer

Due to the complexity of the supply chain, there are major challenges for downstream users attempting to establish a chain of custody from the mine to the product: 1) tracing conflict minerals from finished products back through complicated supply chains to the smelter, 2) tracing ores from the smelter back to the mines of origin; and 3) identifying which mines are conflict mines—that is, mines whose output is controlled by or taxed by warring factions.

A. Producers of Products Containing Conflict Minerals Do Not Have Visibility to the Entire Supply Chain

The assumption that downstream users are able to trace the metals in their products back to the mine assumes a supply chain is a transparent, linear process. In fact, it is a complex, multi-layered network of trading companies and suppliers where products are sourced and consolidated from multiple countries and multiple manufacturers.

Tracing metals from the smelter to mines is complicated by several factors. First and foremost is the nature of the metals themselves. While minerals are mined from the ground, it is metals refined from these minerals that are used in products built by companies subject to the reporting requirements. The smelting process, which converts minerals to useable metals through alteration of physical properties, combines minerals from many sources, making continuance of a chain of custody for original mineral lots impossible.

Typically, companies who purchase products that may contain conflict metals only have direct contact with the first tier supplier or company immediately upstream from themselves. In the case of OEMs utilizing an ASL, there may be selection of second tier suppliers and contact with these suppliers. However, the vast majority of upstream companies in the supply chain are often unknown or unavailable to the ultimate downstream user.

The complexity and length of the supply chain represents a real challenge when attempting to trace specific metals and the minerals from which they are refined. Although one might expect that a purchaser of products would know what is in the products they purchase, that is often far from the truth, especially in electronics manufacturing. In addition to the complexity of the supply chain, a desire to protect intellectual property often contributes to the lack of knowledge regarding product material content. Purchasers typically do not have the necessary leverage to force a supplier to disclose material content. This is particularly true for small and medium manufacturers (SMMs) in the supply chain, which typically have little leverage over their suppliers. Companies throughout the supply chain face significant challenges when trying to trace the conflict metals in their products.

Companies' attempts to gather data regarding the use of the six substances restricted under the European Union Restriction on Hazardous Substances (RoHS) Directive illuminates the difficulties involved in working with highly complex supply chains. When RoHS was first implemented, many electronics OEMs found themselves unable to assess whether their products contained the six substances restricted under RoHS. It took several years for the supply chain to develop knowledge and information regarding the presence of just six substances. Entire computer programs and databases needed to be developed to allow companies to efficiently query and store compliance data from hundreds of suppliers. The difficulty in gathering information regarding the use of conflict metals is expected to be similar.

B. Identification of Conflict-Free Conflict Minerals is Nearly Impossible under Current Conditions

Without improved governance and tracking from the mine to the smelter, it is nearly impossible for downstream users to certify with any level of credibility that their products are conflict free. The problems associated with minerals originate significantly upstream from the companies that are subject to the new legislation. Before the actions of downstream companies can have any effect, more must be done on the ground to: 1) accurately identify good versus bad mines; 2) implement a stronger system of governance to regulate the mineral trade; and 3) work with refiners and smelters to create a process for validating the source of minerals to downstream users. A study by the RESOLVE group found that,

> "While expressing a desire to source responsibly, GeSI and EICC companies have found three major challenges for transparency down to the mine level: their supply chains are not sufficiently transparent to this level; their tracking capacity and accountability mechanisms to this level are missing or limited; and the on-the-ground capacity (in conflict regions) to differentiate sources and ensure independence from operations that may support warring groups does not exist. Metals from multiple mines and other sources are typically undifferentiated and mixed at various points in the supply chain, including by négociants, comptoirs, traders, and smelters."

IPC members are participating in several multi-stakeholder efforts to address and improve transparency in the trade and manufacture of conflict minerals from the DRC and adjoining countries. These efforts are described in Section IV. We encourage the SEC to review the efforts of these groups and recognize their contribution to addressing the underlying goals of Section 1502.

IV. Ongoing Initiatives to Create Supply Chain Transparency

IPC members are committed to addressing the issues associated with conflict minerals and are actively working on both a domestic and international level to craft solutions. IPC member companies are participating in a variety of initiatives to develop industry wide protocols for removing conflict minerals from supply chains. These initiatives are systematically evaluating supply chains to determine the most effective measures to combat trade in conflict minerals.

Through these efforts, many obstacles have been identified and we are working together with non-governmental organizations (NGOs), international organizations, and other groups to overcome them. These efforts, though, highlight the difficulty in crafting a solution and further indicate the need for the SEC to take a measured approach with its rule making. Moreover, while it is important to look to these initiatives for guidance, until there is confidence that those processes are workable, the SEC should not create obligations or set standards for companies based on the industry or international organization initiatives. A phased approach should be considered until the activity currently under exploration creates accepted systems or processes. The RESOLVE group has also pointed out the difficulty in establishing a chain of custody stating,

> "Currently, large-scale smelting facilities typically mingle materials from multiple sources as they are processed. Tracing a metal in a given product is also complex because the material sources vary, and can vary over the life of the product. A given product will often have several suppliers for a particular component, and thus tracing or tracking one supply chain is a snapshot unlikely to remain static or represent a complete supply chain picture."[1]

IPC urges the SEC to be cognizant of these difficulties and to provide sufficient time for the industry to build necessary compliance systems.

A. Ongoing Industry-Lead Efforts to Improve Supply Chain Visibility

1. ITRI Tin Supply Chain Initiative (iTSCi) Process

ITRI, a global organization representing the tin industry, has been working since early 2009 on the ITRI Tin Supply Chain Initiative (iTSCi), a phased approach towards improved due diligence, governance, and traceability of cassiterite from the DRC.[2] IPC's Solder Products Value Council (SPVC), representing the world's leading solder manufacturers, believes that smelters and mines are in the best position to develop and implement a system to ensure mineral traceability from the exporter back to the mine site and to develop chain of custody data. Furthermore, the IPC SPVC supports ITRI's efforts to achieve that goal.

The iTSCi initiative has been widely welcomed with constructive feedback from the United Nations, the Organization for Economic Cooperation and Development (OECD) and a number of specialist non-governmental organizations (NGOs). Michael Biryabarema, director of Rwandan Geology and Mines Authority (OGMR) recently commented, "The recently agreed U.S. 'conflict minerals' bill presents many challenges to African mining and mineral trading businesses, not least the implementation of full and complex due diligence procedures that have not yet been prescribed in detail by relevant authorities. The iTSCi scheme can assist in mitigating the impacts of such regulation by meeting the anticipated requirements as far as possible within the exceedingly short timescales for compliance available to industry and national Governments alike."[3]

The first phase of the iTSCi scheme began operation in July 2009. The goal of this phase is to ensure that all official export and evaluation documentation is available with mineral shipments for export. The first phase focuses on the immediate supply chain from the DRC exporter/comptoir to smelter and introduces due diligence procedures, which will ensure the legitimacy of suppliers and the mineral, which they export. A newly agreed procedure for recording a range of export documents, as well as a specially designed "comptoir certificate," forms the basis of the first phase. The comptoir's certificate will record a physical description of

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[1] Resolve, *Tracing a Path Forward: A Study of the Challenges of the Supply Chain for Target Metals Used in Electronics,* April 2010.

[2] http://www.itri.co.uk/POOLED/ARTICLES/BF_PARTART/VIEW.ASP?Q=BF_PARTART_310250

[3] 10 Sep 2010 Press Release, "ITRI and Rwandan Government to co-operate on iTSCi conflict mineral traceability scheme." http://www.itri.co.uk/pooled/articles/BF_NEWSART/view.asp?Q=BF_NEWSART_320726

the material, together with the declared mine origin and transport route via the intermediate 'negociant' supplier.

Implementation of the iTSCi process in the eastern DRC is currently suspended because all mining activity in the eastern DRC has been temporarily suspended by the government of the DRC since September, 2010. In September and October 2010, the tin, tantalum and electronics industry project partners spent 10 days visiting the DRC and Rwanda in order to see recent progress in the iTSCi mineral traceability project implementation on the ground. The delegation also attended the joint International Conference on the Great Lakes Region (ICGLR) and OECD meeting in Nairobi to discuss due diligence guidance on mineral sourcing from conflict-affected areas.

Future phases of iTSCi will extend the level of knowledge by collating upstream supply chain information from mine to exporter/comptoir. At that stage ITRI intends to work with project partners within the DRC from relevant technical organizations and official services. A third phase of the project is envisioned to develop a more detailed set of supply chain performance standards and ratings that will allow both qualitative and quantitative assessment of a range of factors at each level of the supply chain.

2. The Electronic Industry Citizenship Coalition/ Global e-Sustainability Initiative

In 2009, the Electronic Industry Citizenship Coalition (EICC) and Global e-Sustainability Initiative (GeSI) launched a project to improve visibility in the minerals supply chain, with particular focus on identifying sources of specific minerals and understanding how the minerals move through their lifecycles — from mine to electronics manufacturing. A number of IPC's larger members are directly participating in and supporting the EICC/GeSI initiative. A summary report of that research project, *Tracing a Path Forward: A Study of the Challenges of the Supply Chain for Target Metals Used in Electronics,* was published in April 2010 by the RESOLVE group, which lead the project. The RESOLVE group found that despite companies best efforts they, "face significant challenges due to a lack of transparency and complex structure and relationships in particular metals supply chains."

RESOLVE's research was built around an effort to trace the supply for these metals beginning with suppliers for GeSI and EICC member companies and then pursuing suppliers upstream in the supply chain. RESOLVE also undertook a review of supply chain initiatives relevant to the tin, tantalum, and cobalt supply chains, and the supply chain for other metals in electronics such as gold. RESOLVE sought input from a stakeholder advisory group of diverse organizations including GeSI and EICC members, international and local NGOs, mining companies, investors, and trade associations.

In 2010 EICC/GeSI launched a pilot tantalum smelter validation process. This process will identify smelters that can demonstrate through third party validation that they only source conflict-free material. Over the course of the next few quarters the program will be expanded to include tin and possibly other metals. The group continues to engage companies from all levels

of the tantalum mining and processing industry to drive toward a credible solution that promotes the responsible sourcing of tantalum.

3. IPC Materials Declaration Standard

IPC 1752 Materials Declaration standard for electronic data exchange of product materials information is expected to be modified to assist the electronics industry in validating supply chain compliance with conflict metals legislation and regulation. IPC 1752 Materials Declaration standard was developed to assist the electronics industry in exchanging data related to compliance with the RoHS Directive. When the RoHS Directive was first implemented, the electronics industry faced an enormous challenge in identifying the presence of six prohibited substances throughout a broad and deep supply chain. As a result of company's efforts to assess their use of these substances, members of the supply chain were sending and receiving dozens of materials declaration inquiries each week. In order to make this process more efficient and allow data to be shared across the supply chain, IPC formed the IPC Supplier Declaration Committee (IPC 2-18). The IPC 2-18 task group on materials declaration, which was responsible for development of IPC 1752 and the recently published revision, IPC 1752A, has begun conversations regarding the exchange of data related to compliance with the forthcoming SEC regulations on conflict minerals. It is expected that changes to the standard will be implemented once the SEC has finalized their regulations.

B. Organization for Economic Co-operation and Development (OECD) Framework Due Diligence Guidance

The Organization for Economic Co-operation and Development (OECD) is currently developing practical guidance for managing the supply chain of key minerals from conflict-affected and high-risk areas, with particular regard to the DRC, including relevant aspects of conflict financing, extortion, corruption/financial crime, human rights, security and transparency. OECD findings will be forwarded to the UN Group of Experts for consideration. While much attention is being paid to OECD efforts, IPC is concerned that this ongoing effort is only in the middle stages of development. Although much work has gone into the drafting of the guidelines, they have yet to be tested in any way. The current draft framework will be the subject to a twelve month pilot program to determine if the guidelines are feasible and implementable. Since the pilot program does not conclude until after the SEC will presumably issue a final rule, the SEC should not promulgate the OECD requirements into law as that would be premature.

V. Specific Recommendations for the SEC in Developing Regulations

The SEC should use its discretion in developing regulations that take into account the current lack of accurate information and the deficiency in the transparency associated with the tracking of conflict minerals. Given the reality of trade in minerals, we have identified the following areas in which we believe the SEC should apply their discretion during the rule-making process. By adopting the recommendations set forth below, the SEC will sharpen the regulation, target the requirements, and minimize the burden on those practicing legitimate trade. Without addressing the issues of timing, transition, due diligence, and recycled materials, the regulation could have a

substantial negative impact on the health of the U.S. economy, jobs, manufacturing, and exports while negatively impacting the welfare of the very people Section 1502 was intended to assist.

A. Timing of Implementation of the SEC Regulations

As discussed (Section IV), a number of governmental and non-governmental initiatives are underway to increase supply chain transparency for conflict minerals. These systems are in their infancy. Further, they are hampered by insecurity on the ground in the DRC as well as governmental actions that have shut down some of the mines for an unknown period of time. It is highly unlikely that a full scale-up of these programs will be possible by the April 2011 deadline imposed by Section 1502. The SEC should therefore use its discretion to implement a phased-in approach to the regulations requiring OEMs to declare whether the minerals used in their products are conflict-free or not.

Failure to establish a realistic, implementable time-line for required supply chain transparency will result in significant, negative untended consequences for those engaged in legitimate minerals trade. As it will be impossible to implement measures to provide chain of custody from all conflict mines to smelters by April 2011, companies required to declare the conflict status of their products will likely seek supply chains outside of the DRC and the adjacent countries. While the minerals trade represents a significant, and often only, source of income for many in the region, the supply of minerals from this region is not critical to world markets. In order to be able to label their products conflict-free, OEMs will have no choice but to impose a de-facto ban on minerals originating in the DRC. This will impose real financial hardship the thousands of legitimate miners, traders, comptoirs and negociants in the region that depend on the minerals trade. In order to avoid these consequences, we recommend that the SEC adopt a schedule that will allow enough time for the implementation to supply chain traceability in the DRC so that legitimate trade can continue to provide critical financial support for individuals in the region.

B. Rules Are Needed to Phase in the Requirements

In order to make the reporting requirements useful and practicable, it is necessary for the SEC to implement transition rules to address minerals already present in the supply chain when the regulation is implemented. Additionally, regulations will be needed to address minerals from a mine that changes status from "non-conflict" to "conflict." Without these transition rules, users of conflict metals will not be able to identify themselves as "conflict-free," until the regulations have been in place for a number of years.

Although a number of efforts to institute smelter verification programs and thereby establish a supply of "conflict-free" minerals and refined metals are underway, it will be some time before these processes have been fully implemented and validated. It is therefore necessary to establish a transition period that exempts minerals or processed metals already at smelters, processing centers, or other downstream positions in the supply chain that was obtained prior to a specified implementation date. If there is no transition rule for materials already in the supply chain prior to a validation program then all smelted metals for the initial reporting will have to be reported as being of unknown origin. This is because manufacturers will be unable to obtain the information as all minerals are comingled without respect to country or mine of origin.

Similarly, products manufactured with the refined metals already incorporated in finished goods or from conflict minerals already in the suppliers' inventories prior to an established cutoff date should be exempt. This exemption will allow for the design and implementation of programs to impose identification requirements on their upstream supply chains. Again, absent a transition rule, filers will be forced to identify all products as containing conflict minerals of unknown origin in the initial reporting period.

We encourage the SEC to adopt a no-transubstantiation rule stating that if a mineral is 'conflict-free" when it arrives at the smelter, it cannot become "conflict-full" if it's mine of origin changes status during the period that the mineral/refined metal is moving through the supply chain. The State Department identified this as a challenge to properly identifying which mines are controlled by parties perpetrating atrocities. From the extraction of the minerals from the mines to the incorporation of the refined metals into products manufactured in the United States, significant time will pass and "conflict mines" will change status. For this reason, a no-transubstantiation rule is recommended.

C. Due Diligence

Section 1502 requires filers to report on the due diligence they have exercised over the source and chain of custody of minerals mined in conflict regions. It has been suggested that due diligence requires the company filing with the SEC to identify all parties between the mine and the SEC filer, i.e. the entire supply chain. This is both impracticable and inefficient due to the complexity of the supply chain and the nature of minerals processing. Instead, we encourage the SEC to allow companies to develop supply-chain implemented solutions that are efficient and effective

We urge the SEC to avoid defining "due diligence" in a manner that prescribes specific requirements for due diligence. Each company in the electronics supply chain is unique and has their own unique supply chain. Some companies are quite large and have extensive resources, while others do not. Given the diversity of companies and products impacted by future regulations regarding Section 1502, the SEC should avoid defining the particular details of what constitutes due diligence. We urge the SEC to provide companies the flexibility to develop a due diligence plan that is consistent with their supply chain and information available within.

Requiring each company filing with the SEC to identify and audit their entire supply chain is exceedingly inefficient. Rather, we submit that the filer work with its direct suppliers to promulgate requirements to use conflict free minerals/metals upstream. Specifically, we encourage the SEC to recognize the following elements of due diligence:

- Contractual obligations on direct suppliers to exclude conflict minerals mined in the Democratic Republic of the Congo or an adjoining country from goods supplied to the company subject to the SEC.
- Implementation of a risk-based program that uses company control processes to verify that suppliers are providing credible information and pushing contractual obligations upstream.

- Participation in, or reliance on, information gained from an industry wide or smelter validation process such as those described in Section IV of these comments.
- Reliance on government-produced information, such as the mapping of conflict regions assigned to the Departments of State and Commerce, should be presumed to satisfy the requirement that due diligence be reliable for those elements of due diligence that require working with suppliers to prevent sourcing from conflict mines or refiners using conflict minerals. In addition, the governments of the DRC and adjoining counties are engaging in an evolving set of measures to suppress trade in minerals from conflict mines.

The legislative requirement for companies to exercise due diligence over the source and chain of custody of conflict-minerals should not be interpreted to require the establishment of a chain of custody reaching from the product to the mine. Establishing a chain of custody over the metals that have been refined from conflict minerals must be recognized as impossible. While we recognize that the problem of conflict minerals originates in conflict mines, we also recognize that the mine of origin is often very far removed from the manufacturer required to report under the law. Further, once minerals have been processed into metals, individual lots of minerals can no longer be isolated. In such scenarios, tracing the chain of custody requirement to the smelter is exceedingly difficult, while tracing it beyond the smelter is nearly impossible. Any chain of custody for the origin of minerals must be recognized to end at the smelter. Therefore, we urge the SEC to clarify that the legislative requirement for companies to report to the SEC the measures they have taken to exercise due diligence on the source and chain of custody of minerals to mean that persons covered by the Act will report on the measures they have taken to ensure that the mineral processors involved in their supply chains identify the sources of conflict minerals in their products.

Given the nature of the situation on the ground in the DRC, it is important for the regulation to recognize that due diligence does not require 100% accuracy, given that certainty is not possible with the situation on the ground and the fluid nature of supply chains. Evidence that conflict minerals may have entered a supply chain despite the exercise of due diligence should not render a report unreliable if the reporting person has exercised reasonable care in conducting its due diligence process. As stated by RESOLVE, "Processed material can be deemed "conflict free" only if all material entering a processing facility is tracked or batched and handled separately from materials of different origin...This means that, today, while end-use companies have the potential to establish and have confidence in sources for some percentage of the metals in their products, they cannot assert 100% sourcing certainty about individual metals or the product as a whole without significant alterations and/or assurance mechanisms in their supply chains. Success requires confidence in supply chain relationships and new strategies, such as direct sourcing, or innovations, such as minerals tagging or fingerprinting. Movement is likely to come in a step-wise manner." We urge the SEC to be cognizant of existing limitations and developing compliance schemes when developing requirements.

D. Exemption for Recycled Minerals

The regulations should specifically exempt recycled or reclaimed metals, as downstream users have no ability to trace the origin of the original minerals. The traceability of the reclaimed

metals is impossible to track due to the various forms of recycling and thousands of consolidators, reclaimers, and scrap dealers both foreign and domestic.

We believe Congress intended to regulate ore and metal refined directly from minerals mined from the DRC and adjoining countries. Exempting recycled or reclaimed metals does not contradict the congressional intent, to stop funding the atrocities in the DRC. The DRC rebel groups are funded by operating mines to extract and sell ore, and by extracting tariffs from those transporting ore. The DRC rebel groups do not obtain revenue from trading in recycled materials. Accordingly, recycled metal was not intended to be covered by the statute and should be excluded in the SEC's regulations.

Furthermore, given other government efforts to encourage recycling in electronics and other industries, we presume that the SEC would not wish to contradict recycling promotion by failing to provide necessary exemptions for recycled metals.

VI. Economic Impact

We believe the regulation should be implemented in a manner that minimizes costs and the burden on companies without diminishing the intent of the legislation. We encourage the SEC to conduct a thorough cost analysis on the impact of this regulation before issuing a final rule. The overall impact on the economy is likely greater than $100 million (the threshold established in E.O. 12866 to warrant further scrutiny of a proposed rule by the Office of Management and Budget (OMB)). Expected costs to comply with the regulation include new computer systems to track, store and exchange data regarding mineral origins; evaluation of products; review of the supply chain; modification of supplier contracts; participation in smelter validation programs; and independent third party audits.

SMMs will be disproportionately affected by the requirements under this regulation. SMMs will face larger per unit compliance costs because they have smaller business volumes and more limited resources with which to conduct audits and manage the required documentation. Additionally, SMMs may have difficulty in controlling their suppliers sourcing of conflict minerals as their small size affords them limited leverage over their suppliers. SMMs do not have the customs and compliance staff typical of larger corporations and companies thus making compliance efforts even more difficult. As required by the Regulatory Flexibility Act, the SEC must provide economic analysis on the impact to small businesses. To ameliorate the impact on SMMs, we encourage the SEC to allow maximum flexibility in the implementation of Section 1502.

VII. Conclusion

IPC is committed to addressing the use of conflict minerals and is actively working with many of its members on both a domestic and international level to address the issue. IPC member companies are participating in a variety of sector specific initiatives to develop industry wide protocols for removing conflict minerals from supply chains as well as with international

organizations. Given the broad potential impact of these regulations on the day-to-day operations of manufacturing companies throughout the United States, and the impacts on legitimate trade in the DRC, we urge the SEC to exercise caution when implementing regulations under Section 1502 of the Dodd-Frank Act. Specifically, we encourage the SEC to allow maximum time and flexibility for industry to implement these potentially far-reaching rules. We encourage the SEC to allow companies the flexibility to develop appropriate, supply-chain-based due diligence processes. We also encourage the SEC to develop appropriate exemptions for recycled materials and materials already in the manufacturing supply chain at the time these regulations are implemented. Finally, we ask the SEC to conduct a thorough economic analysis of the draft regulations to ensure that they have implemented the underlying goals of the legislation without imposing undue burden on manufacturers and the American economy.

We look forward to continuing to work with the SEC. Please contact me should you have any questions.

Fern Abrams
Director of Government Relations and Environmental Policy

QUALITY. ADVOCACY. LEADERSHIP.

KCMA

KITCHEN CABINET MANUFACTURERS ASSOCIATION

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515-6143

January 21, 2011

Dear Chairman Issa:

The Kitchen Cabinet Manufacturers Association (KCMA) is the national trade association for kitchen and bath cabinet manufacturers and key suppliers to the industry. KCMA has 350 members evenly divided between cabinet manufacturers and suppliers to the industry. Sixty percent of KCMA cabinet manufacturer members report sales under $10 million. There are over 5,000 cabinet makers located in virtually every zip code in the U.S. according to the Department of Commerce. Most of the cabinet makers are small businesses with twenty or fewer employees.

We are an important part of the forest products industry with virtually all of our products produced from wood. As you would expect, KCMA members have suffered greatly as a result of the economic downturn and most are struggling to survive.

There are a host of pending regulatory and legislative proposals that could negatively impact industry efforts to recover from the devastating effects of the recession.

We appreciate the efforts of the Committee and others to address regulatory challenges and finding a satisfactory balance between protecting the public health and safety and improving the economy and protecting jobs.

In response to your request, KCMA has identified several federal regulations that could negatively affect economic recovery and jobs in the future. Key examples follow:

1. EPA Boiler MACT -- would set stringent new emission limits for several hazardous air pollutants (HAP's) from boilers, solid waste incinerators and process heaters. Estimated to cost the forest products industry over $20 billion. Would severely impact small businesses and jeopardize thousands of jobs.

2. EPA Residual Risk Standards—changes proposed to industry MACT standard for HAP's and VOC's adopted in 1995 through a unique negotiated consensus process involving all stakeholders. Changes could reduce the flexibility to operate provided by current guidelines and force changes to a key chemical used in finishes that affect their performance and cost. Extension of the current regulation with no changes should be sufficient.

3. EPA IRIS Update for Formaldehyde—key decision expected early this Spring as to whether formaldehyde will be declared to cause leukemia which would have a huge negative impact on industry with potential to cost thousands of jobs. Sound science at issue here.

4. EPA Regulations to Implement Formaldehyde for Composite Wood Products Act (PL 111-199) – EPA authorized to exempt veneered hardwood plywood components defined as "Laminated Products" from coverage under the Act as plywood. This should be done in order to protect a key supply chain and those few KCMA members (cabinet manufacturers) who do limited veneering for special projects (usually high end) from being required to undergo expensive testing, recordkeeping and other paperwork required if they are regulated as a plywood manufacturer. EPA should adopt the California Air Resources Board (CARB) regulation as much as possible for this is what prompted the federal legislation. This approach would provide a nearly seamless transition for those being regulated. Federal preemption was not part of PL 111-199.

5. OSHA Combustible Dust – advance notice of proposed rulemaking on combustible dust issued in October 2009. Compliance with the new rule estimated to cost industry millions of dollars in capital expenditures and higher operating costs with negligible improvement to worker safety. Performance based standards far more practical than prescriptive approaches.

6. OSHA Noise Enforcement – notice issued on October 19, 2010, indicating that plans are to change the official "interpretation" of workplace noise standards so as to require expensive engineering controls and administrative controls as opposed to utilization of personal protective equipment. Changes required regardless of cost unless the changes would "put them out of business" or severely affect a company's "viability." This approach would evade open rulemaking process, impose huge additional cost on our industry, and is bad policy.

Thank you very much for the opportunity to provide information to the committee regarding these important topics. We would be pleased to provide further information or otherwise assist the committee.

Yours truly,

C. Richard Titus

C. Richard Titus
Executive Vice President

Cc: The Honorable Elijah Cummings, Ranking Member

Feedback on what regulations have a negative growth effect on job creation:

- In many states Workers Comp insurance provides a tremendous disincentive in hiring due to the cost. In our line of business (sales) there is seldom a WC claim and this should not be a significant cost in running our business.
- Taxes/Costs on employment that rise even when our basis for determination decrease. State and Federal unemployment tax, as well as an increase in Social Security caps are examples.
- New ways to tax businesses like CAT taxes- "for the privilege of doing business" in the state of incorporation.
- The lack of traffic safety funding due to SAFETEA-LU expiring over a year ago w/o any plan. This category has been a significant part of our business and we have not rehired 2 people in part because the whole traffic safety industry is in a wait and see mode without a long-term funding program in place.
- Our employment of sales and support people is directly related to the employment of workers in industry, construction, utilities, and public safety. We sell products that are used by people in their job (disposable safety products like gloves and safety glasses). Supporting these industries by focusing on THEIR needs in employing more will have a double benefit by allowing us to hire people to support the increased demand for our products.

Mazda North American Operations

Jay Amestoy
Vice President
Public and Government Affairs

January 10, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Dear Chairman Issa:

In light of your committee's interest in receiving information related to regulations that have unintended adverse consequences on the U.S. economy, we offer the following background information related to EPA's October 2010 decision to grant a partial waiver approving the sale of gasoline containing 15 percent ethanol (E15) for 2007 model year (MY) and newer passenger cars and light trucks. Mazda supports efforts to increase the usage of biofuels and understands the need to meet the renewable fuels standards of the Energy Independence and Security Act (EISA). To that end, there are about 8 million flexible fuel vehicles (FFVs) on the road today –including some Mazda models – that have been built to use up to 85 percent ethanol.

Unfortunately, the recent E15 waiver and the accompanying misfueling rule are fraught with problems. They will not accomplish the goals of EISA, and they will create confusion and disputes that could sour consumers on mid-level ethanol blends. The Clean Air Act does not authorize EPA to issue any "partial waiver" decisions. This argument is at the heart of several lawsuits that have been filed challenging the EPA decision.

Additionally, EPA's own statute passed by Congress in 2007 states that fuels cannot be approved for the market that could cause any failures. Further, administrative records fail to demonstrate that even new model year motor vehicles (other than FFVs) would not be damaged and result in failures when run on E15.

The waiver allows introduction of E15 for sale in vehicles dating back to 2007 MY. EPA is considering a further waiver covering 2001-2006 MYs and is expected to announce this decision in late January. All of the vehicles on the road today can use a gasoline blend of up to 10 percent ethanol without voiding the warranty the manufacturer provides to consumers. Such vehicles were designed to use a maximum of E10.

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Because ethanol is more corrosive than gasoline, damage to vehicles not designed to run on E15 is anticipated. The study EPA has relied on to demonstrate the ability of such vehicles to accommodate E15 is limited and not conclusive and EPA has declined to wait for additional studies in the pipeline. In any case, such studies cannot establish the absence of problems with specific vehicles or under specific circumstances. When E15 arrives in the marketplace, problems with past vehicles are virtually certain to arise; manufacturers and consumers will be forced to sort them out. Dealers and manufacturers will be faced with unhappy customers if vehicle damage occurs. Moreover, consumer dissatisfaction will inevitably occur when they re-fuel with E15 only to discover that it degrades both vehicle performance and fuel economy.

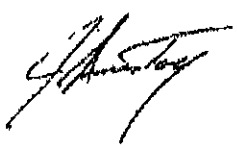
Furthermore, the conflict between the proposed pump labels (attached) and vehicle owner guides will create significant confusion. EPA's waiver decision only addresses what fuel may be offered for sale; it does not address vehicle maintenance and fueling instructions. EPA's proposed pump labels will indicate that consumers may fuel 2007 MY and later vehicles with E15. Yet all, or virtually all, owner guides for past model year gasoline-powered vehicles direct consumers not to use ethanol blends higher than E10 (and E15 was not even in the marketplace when the owner guides were written). Inasmuch as the vehicles were not designed to run on E15, the direction in the owner guides remains valid. EPA regulations allow manufacturers to deny warranty coverage for vehicles damaged due to misfueling (based on the owner guide instructions). The disparity between the pump labels and the pre-existing owner guides will, at the very least, cause confusion; it may well lead to disputes among consumers, manufacturers, service stations and fuel providers.

The proposed misfueling rule will not be effective in preventing widespread misfueling. Whatever the language of the new E15 pump label, many consumers will ignore the label and put E15 in vehicles (and other products) not intended to receive it. The misfueling that occurs will likely damage some vehicles, many of which are out of warranty; it will also compromise some emission control systems and lead to higher emissions.

In sum, EPA has failed to define a long-term strategy for meeting the EISA alternative fuel mandates and instead has taken to a band-aid approach to address this important issue, leaving auto manufacturers, consumers, fuel suppliers and distributors to deal with the fallout. The E15 waiver decision will almost certainly lead to increased costs for consumers, vehicle servicers including dealerships and independent shops, manufacturers and fuel providers. These costs threaten to inhibit economic growth and the continued recovery of our fragile economy.

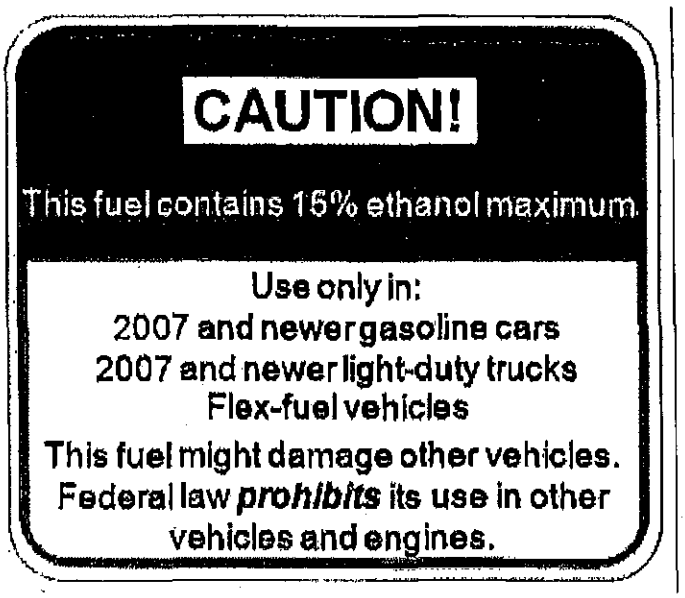
Thank you for considering our views. If you have any questions about this information, please contact Barbara Nocera at bnocera@mazdausa.com or 202.467.5096.

Sincerely,



Jay Amestoy
Vice President, Public and Government Affairs
Mazda North American Operations

EPA's Proposed E15 Misfueling Label



NATIONAL ASSOCIATION OF
Manufacturers

Jay Timmons
Executive Vice President

January 7, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight & Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Issa:

On behalf of the National Association of Manufacturers (NAM), the largest manufacturing association in the United States, thank you for the opportunity to identify proposed or existing regulations that are negatively impacting jobs, the economy and our economic competitiveness. This list is not exhaustive but represents high priority regulations that will have a significant impact on our ability to compete globally and create jobs. We look forward to a continuing dialogue on the impact of regulation on manufacturing.

In your letter, you cite the statistics from the Small Business Administration's (SBA) Office of Advocacy analyzing the impact of regulatory costs on small firms. The study represents the best research available to identify the disproportionate burden placed on small business by regulation and the even more disproportionate burden placed on small manufacturers. Manufacturers bear the heaviest burden from environmental regulation, while facing similar or more stringent regulations in workplace safety, health, transportation, financial, trade, tax administration, homeland security and export controls. A study by the Manufacturing Institute and MAPI indicates that structural costs imposed on U.S. manufacturers including regulation create a 17.6% cost disadvantage when compared with nine major industrialized countries. For these reasons the NAM developed a strategy to enhance American manufacturing.

The NAM published its "Manufacturing Strategy for Jobs and a Competitive America" in June 2010. In that Strategy, we identified three overarching objectives: 1) to be the best country in the world to headquarter a company; 2) to be the best country in the world to do the bulk of a company's research and development; and 3) to be a great place to manufacture goods and export products. Comprehensive action is needed to counter the impact of unnecessarily costly regulation to achieve these objectives. We look forward to partnering with your committee, Congress and the Executive Branch to reform the regulatory policies outlined below, additional existing regulations and the regulatory process to produce a more thoughtful regulatory environment that encourages rather than discourages job creation in the United States.

While working on a larger reform agenda, immediate action and attention is needed on the following areas of regulatory policy this Administration is in the midst of proposing or implementing. If they are not substantially changed from their present form, they could cost millions of jobs and weaken an economy in a still fragile recovery.

EPA Regulation of Greenhouse Gas Emissions

On January 2, 2011, the EPA began regulating greenhouse gas (GHG) emissions from stationary sources under the Clean Air Act. While only the largest facilities will be regulated at first, this action sets the stage for future regulation of much smaller sources. Manufacturers are also concerned that states are unprepared for the new permitting requirements, which will cause significant delays. This permitting gridlock will discourage manufacturers from building new facilities or expanding their current facilities, hurting competitiveness and discouraging job creation. Furthermore, additional facilities – including hospitals, agricultural establishments and even the smallest businesses – will be phased in to the onerous permitting requirements in the near future.

EPA Boiler MACT

The Environmental Protection Agency (EPA) has proposed a rule that would establish more stringent emissions standards on industrial and commercial boilers and process heaters (i.e. Boiler MACT). This broad-reaching proposal could cost manufacturers over $20 billion in compliance costs and place hundreds of thousands of jobs in jeopardy. Furthermore, the NAM expressed concerns to the EPA that the proposed standards could almost never be achieved by any single, real-world source. In December 2010, the EPA asked the federal District Court for the District of Columbia for an extension to re-propose the rule, take industry comments and then finalize the package by April 2012. We welcome the additional time for a review, but the new proposal must ensure that the standards are economically feasible and achievable in practice for manufacturers.

EPA NAAQS for Ozone

The EPA in January 2010 issued a reconsideration of the National Ambient Air Quality Standards (NAAQS) for ground-level ozone. Despite continued improvement in the nation's air quality, the EPA has proposed to tighten the standard from the existing 75 parts per billion (ppb) to a range between 70 ppb and 60 ppb. The NAM's overriding concern with the proposal is that the high compliance costs associated with the more stringent ozone standard will hinder manufacturers' ability to add jobs and hurt our global competitiveness. One study estimated 60 ppb would result in the loss of 7.3 million jobs by 2020 and add $1 trillion in new regulatory costs per year between 2020 and 2030. The Agency has delayed finalizing the rule until July 2012 to allow for continued analysis of the epidemiological and clinical studies used to recommend the ozone standard.

SEC/CFTC Derivatives Regulation

As end-users of over-the-counter (OTC) derivatives to manage risk, manufacturers in the United States have a strong interest in the implementation of the new rules on OTC derivatives in the Dodd-Frank Act. In drafting these regulations, we urge the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) to avoid any new regulations on derivatives that inadvertently harm economic growth. In particular, it is crucial that new regulations on derivatives include a strong and workable exemption for end-users, like manufacturers, that use derivatives to hedge commercial risk. In contrast, rules that impose margin requirements on manufacturers or that impose financial regulation (such as a swap dealer or major swap participant) on non-financial businesses, could seriously harm the

recovery by diverting companies' financial resources from much-needed business investment and job retention and creation. Similarly, regulations that make hedging too expensive will place manufacturers in the uncomfortable position of either having to divert additional money away from production or discontinue hedging business risk, which would require liabilities to reappear on corporate balance sheets, driving up the cost of capital.

OSHA On-Site Consultation

There has been a significant shift by the Occupational Safety and Health Administration (OSHA) from a more collaborative posture to a more adversarial approach toward business. Employers, particularly small businesses, should be able to consult with OSHA and receive its assistance to better understand and comply with existing workplace safety standards to enhance the safety of their workplaces without fear of citations and fines. Recently, OSHA proposed a rule that would subject small businesses to enforcement based on their voluntary participation in these programs. As a result, businesses will be more reticent to reach out to OSHA for help and less likely to participate in this program. We are troubled that OSHA performed no analysis to determine the impact of the proposed changes on small business participation in the On-Site Consultation Program. Instead of deterring participation in these effective programs, OSHA should focus on developing incentives and strategies that will encourage as many employers as possible to participate in these programs.

OSHA Noise Proposal

OSHA recently indicated that it plans to enforce noise level standards in a dramatically different way by redefining what is deemed "feasible" for employers to reduce overall noise in the workplace and requiring implementation of these actions unless an employer can prove making such changes will put it out of business. OSHA's proposal would alter a long-running and effective policy that allows employers to provide "personal protective equipment," such as ear plugs and ear muffs, if they are more cost-effective than engineering controls like noise-dampening equipment and muffling systems in order to protect their employees from high noise levels. Such changes would need to be made by employers of all sizes, regardless of their costs. We are concerned that preliminary estimates by manufacturers demonstrate that total compliance costs for fully implementing this proposal may reach billions of dollars. We are troubled that OSHA is pursuing this change outside the formal rulemaking process and, as such, is not following the Administrative Procedures Act that provides opportunity for full and fair public input and requires sensitivity to small entities.

OSHA Injury and Illness Protection Program

OSHA is also developing a new regulation that would mandate a standard for employers' safety and health programs, referred to as an Injury and Illness Prevention Program (I2P2). Such a concept is expected to be proposed in the spring of 2011 and would have sweeping ramifications on all aspects of both workplace safety enforcement and the promulgation of new regulations. We are concerned that this new proposal from the Agency may not take into account the efforts by employers who already have effective safety and health programs in place or how this new mandate would disrupt safety programs that have measurable successes. Based on preliminary information from the Agency, this proposal may allow OSHA investigators to substitute their judgment of the employer's plan on how to achieve compliance and whether some "injury" in the workplace should have been addressed in some way even if it was not

regulated under a specific standard, or did not amount to a "significant risk" as required under the OSH Act.

Commerce/State/Defense Export Control Regulations

U.S. export control regulations have not been significantly revised since the Cold War. The result is a system that no longer fully protects our national security, has not kept up with accelerating technological change and does not function with the efficiency and transparency needed to keep the United States competitive in the global marketplace. The current regulations are eroding America's global technology leadership, harming the defense industrial base and costing U.S. jobs. Recent studies by the National Academies of Science and the Defense Science Board have concluded that the current export control regulations and system are a threat to national security. The Milken Institute estimates that if the export control regulations are modernized, U.S. high-tech exports could increase by $60 billion, resulting in 350,000 new jobs. Modernization will enhance the government's ability to protect national security interests while removing the burdens and disadvantages placed on U.S. high-technology manufacturers. The government should thoroughly modernize export controls to strengthen the industrial base, enhance national security and improve economic competitiveness. In this area, we applaud the Obama Administration for the steps it has taken thus far to modernize the export control system, but more is needed to improve the system in 2011 to protect manufacturing jobs.

DOT Transportation of Lithium Batteries Rulemaking

The Department of Transportation's (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA) proposed new shipping and handling requirements for the transportation of lithium ion and lithium metal batteries in January 2010. The rule mandates changes in the way lithium batteries and cells and products containing these batteries are transported in passenger and cargo aircraft. Of note, the PHMSA rejected all requests for extensions of the comment period and has severely limited industry input and technical discussions in what is an extremely complicated proposal that creates serious inconsistencies between international and U.S. aviation regulations. The proposed rule impacts a variety of products and manufactured goods ranging from everyday consumer items to implantable medical devices. Billions of lithium batteries and products containing them are shipped annually by air without incident. The costs of the current proposal are conservatively estimated at a billion dollars annually. If implemented as currently written, manufacturers will face reductions in existing air freight capacity, new costs associated with massive supply chain redesigns, additional training costs, inefficiencies that could cause confusion with international partners who adhere to alternate standards and lost business to foreign companies who are not subject to these proposed rules. Manufacturers strongly support a rule that instead achieves harmonization with internationally agreed-upon requirements for lithium battery transport.

DOT Hours of Service Rulemaking

The DOT's Federal Motor Carrier Safety Administration (FMCSA) has announced changes to the trucking hours of service rules first implemented in 2004. It has proposed to reduce well-established 11-hour driving and 14-hour on-duty times for truckers and to introduce new rest mandates. Over the past six years, driver and motor carrier safety performance has improved, and truck-involved fatalities and injuries have markedly declined. For manufacturers and those dependent on a healthy manufacturing economy, changes to the rule will have major

impacts on distribution patterns, supply chains, just-in-time delivery standards, trucking capacity and ultimately will add operational costs to be borne by shippers and motor carriers. In 2005, the American Trucking Association estimated that reducing the driving time by one hour and eliminating the 34-hour restart provision would cost over $2 billion to impacted industries. While the DOT is adhering to the terms of a 2009 court negotiated settlement reached with Public Citizen by reviewing and reconsidering the 2008 Final Rule on Hours of Service, the Department is not obligated to alter the rule. The Department's recent public commentary on poor truck driver health and longevity is drawing some concern because the scientific data to justify a change in the current rule is not strong. Approximately 80 percent of the nation's freight by value moves by truck.

CPSC Product Safety Information Database

In 2008, Congress passed and the President signed the Consumer Product Safety Improvement Act (CPSIA), which, among other provisions, directed the Consumer Product Safety Commission (CPSC) to produce a product safety database that would provide consumers with a meaningful tool to research product safety information that is accurate and includes first-hand accounts of consumers and public safety entities. There was significant debate in Congress on the appropriate types of reporters to include in the database. The final CPSC rule, however, recognizes that Congress provided an exhaustive list of reporters but strains credulity by expanding the definitions of consumers and public safety entities beyond their clear public meaning and the intent of the drafters of the legislation. It redefined the terms "consumer" to include trial attorneys and public safety entities to include "consumer advocacy organizations." As a result, the database will be filled with bogus reports inspired by political or financial motives rather than safety. Congress also struck an appropriate balance between the speed of publication of reports and the desire for accuracy as well as the protection of confidential business information. The final rule provided for no such balance and creates a default for immediate publication before any meritorious claims regarding trade secrets or material inaccuracy are resolved. Once a trade secret is posted within a report, for example, no remedy is available to undo the damage. These claims as well as claims of inaccuracy, impossibility, or product misidentification must be resolved before the information is made public if the database is to provide helpful information to the public.

We look forward to continuing a dialogue with you and your committee about regulation and regulatory policy. In future communications, we will outline additional regulations in need of reform and recommend options for reforming the regulatory process. Together we can help make the United States the best place in the world to do business and create jobs. But a very different approach to regulation will be necessary to accomplish this important objective.

Sincerely,

Jay Timmons

JT/rp

Motor & Equipment Manufacturers Association
Your First Call for Global Intelligence on the Motor Vehicle Supplier Industry

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202-393-6362 • Fax: 202-737-3742 • www.mema.org

January 10, 2010

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
House of Representatives
Washington, D.C. 20515

Dear Chairman Issa:

The Motor & Equipment Manufacturers Association (MEMA) represents over 700 companies that manufacture and remanufacture motor vehicle parts for use in the light vehicle and heavy-duty original equipment and aftermarket industries.[1] Motor vehicle parts suppliers are the nation's largest manufacturing sector, directly employing 685,892 U.S. workers and contributing to over 3.2 million jobs across the country. On behalf of this industry, I thank you for your letter, dated December 29, 2010, regarding the efforts of the Committee on Oversight and Government Reform to examine existing and proposed regulations that have negatively impacted the motor vehicle parts manufacturing industry.

MEMA believes that regulations must provide a balanced framework from which manufacturers can operate and flourish while addressing statutory requirements outlined by Congress. MEMA member companies are not opposed to regulations when applied in this manner, but the industry opposes legislating through the regulatory process. Motor vehicle parts manufacturers have worked closely with the National Highway Traffic Safety Administration (NHTSA) on the implementation of rules focused on updating the stopping distance requirements for heavy-duty vehicles and adding the stability control technology requirement for passenger vehicles. These rules have not created onerous costs to industry or the economy and will make our roads safer. At the same time, MEMA has raised objections regarding the proposal and implementation of rules from agencies when the burden on manufacturers outweighs the stated policy objectives. Without appropriate regulatory policy, the global competitiveness of the United States will continue to decline and more manufacturing jobs will be lost.

[1] MEMA represents its members through four affiliate associations: Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), Motor & Equipment Remanufacturers Association (MERA) and Original Equipment Suppliers Association (OESA). The motor vehicle parts supplier industry is a leader in developing technologies critical to making today's vehicles safer and more fuel efficient and is investing in product development to help meet future consumer demand. Suppliers also manufacture the aftermarket products necessary to repair and maintain over 247 million cars and trucks on the road today.

Environmental Protection Agency

A number of regulations from the EPA would have significant negative impact on the industry. The most troubling of these are the greenhouse gas (GHG) regulations on stationary sources, which will dramatically increase the cost for suppliers to manufacture components, systems and parts. While this rule will not directly apply to the vast majority of motor vehicle supplier facilities, the indirect costs will be substantial. Price increases for fuel and electricity will in turn lead to increased manufacturing costs. Furthermore, the price of feedstocks, such as steel, glass, aluminum, chemicals, plastics, etc., that are necessary to manufacture motor vehicle parts, will also increase.

Although MEMA is concerned about the GHG regulations on large stationary sources and believes that the regulation should be delayed, MEMA supports the implementation of the national program for light-duty vehicle emissions and fuel efficiency requirements, a collaborative, joint rulemaking between NHTSA and EPA. Without this national program approach, there will be no national certainty in vehicle emissions and fuel efficiency requirements from state to state. The current program, which covers vehicle model years 2012 to 2016, requires emissions and fuel efficiency standards that are attainable by the auto industry while also improving our air quality and decreasing our reliance on foreign oil. As EPA and NHTSA begin work on the next phase of light vehicle emissions and fuel economy standards, MEMA has continued to support a uniform program that not only allows vehicle manufacturers to invest in the appropriate technologies needed for their vehicles to reach or exceed fuel economy and emissions targets, but also to help the supplier base convert research technologies into commercially viable products.

Additionally, EPA and NHTSA are working to develop a joint national program to establish the first-ever fuel efficiency and GHG emissions standards for medium- and heavy-duty vehicles and are currently accepting comments on the Notice of Proposed Rulemaking covering model years 2014 to 2018. While MEMA applauds the proposal as the appropriate first step, we are concerned about the impact and feasibility of future mandates addressing vehicles beyond model year 2019. Historically, EPA regulations have had a dramatic impact on employment and vehicle sales within the heavy-duty sector. For example, the 2002, 2007 and 2010 EPA requirements to lower heavy-duty engine emissions of nitrogen oxides and particulate matter had a direct, negative impact on the employment and financial viability of many heavy-duty parts manufacturers.

MEMA objected in part to the new and overly stringent standards for industrial boilers from EPA. These standards will have an immediate impact on our members' bottom line without demonstrated environmental benefits. Compliance costs associated with these harsh and inflexible proposed rules will cost U.S. manufacturing jobs and hurt global competitiveness, just as the economic recovery attempts to gain more traction.

Changes to how EPA categorizes "Used Oil" are opposed by MEMA. Last year, EPA took steps to reclassify used oil as a solid waste. The Used Oil regulations, which were developed in 1985, have encouraged recycling by allowing for the development of markets for which both "On-Specification" and "Off-Specification" used oils are now considered traditional fuels and have become valuable commodities as a result. This proposed rule will have unintended consequences that could negatively affect the used oil and used oil filter recycling efforts in the United States, cause negative environmental impacts and place economic burdens on industry,

states, and local communities that rely on these valuable commodities for cost-efficient production purposes.

MEMA has also raised questions about EPA's decision to clarify the Toxic Release Inventory (TRI) article exemption. Since 1988, EPA has interpreted the articles exemption to exempt from TRI reporting the normal migration of reportable chemicals from finished goods that have completed the manufacturing process. The fundamental precept underlying this position has been that such migration is not caused by the "processing" or use of the item, but occurs continuously throughout the life of an article. Under EPA's proposed clarification, emissions of chemicals from finished goods that are not processed or used, or that are sitting in storage, would be reportable to the TRI. This proposed clarification would greatly increase reporting burdens on manufacturers.

Occupational Safety and Health Administration

There are three potentially problematic issues emerging from OSHA. The agency published an interpretation notice (outside the normal rulemaking process) that will dramatically change the way it enforces noise level standards. This change would impact businesses of all sizes and replace a currently effective policy under which employers may provide cost-effective and efficient personal protective equipment to protect their employees from exposure to high noise levels. Under the new proposal, employers must do what is "feasible" to reduce overall noise in the workplace, regardless of cost.

Additionally, MEMA fears that OSHA's anticipated rulemaking on employer's safety and health programs, the Injury and Illness Prevention Program (I2P2), will not take into consideration the significant efforts that employers are already making in this area and leaves definitions such as "injury" and "significant risk" open to interpretation by OSHA investigators. Employee health and safety is a priority for our member companies. However, MEMA views both of these proposed changes as too broad and overreaching as well as financially unsustainable for businesses of any size to comply.

In addition, MEMA believes that OSHA is taking a more adversarial approach with employers, particularly small employers, in its consultation practices. Employers should be able to consult with OSHA to gain a better understanding of how to comply with workplace safety standards without fear of citations and fines. A recently proposed rule would subject small businesses to enforcement based on their voluntary participation in these types of programs. This action would create a strong disincentive to participate in consultation programs, which can be a valuable resource for employers.

National Labor Relations Board

MEMA is carefully watching activity from the NLRB. In December, the NLRB proposed a rule that would require employers to post a notice to employees about their rights to unionize under the National Labor Relations Act. Moreover, the notice must be posted like other required employee rights posters and must also be posted electronically, if employers use electronic communications. Additionally, the Board has proposed establishing a new "unfair labor practice" liability on employers for failure to comply with this proposal's requirements for posting. As the landscape on Capitol Hill has changed, MEMA worries that the Administration may seek to

advance issues related to the Employee Free Choice Act through regulatory channels and believes that the Board's authority to issue this proposed rule is unclear.

DOT Pipeline and Hazardous Materials Safety Administration

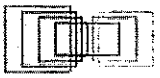
MEMA believes that the new shipping and handling requirements for the transportation of lithium ion and lithium metal batteries is unnecessarily excessive in light of existing, stringent international standards. These regulations will be inconsistent with those previously adopted by international regulators and U.S. trading partners. Each year, billions of lithium batteries and products containing them are shipped by air without incident. The estimated cost to shippers to comply with this proposal would be significant, impacting manufacturers, retailers and consumers. MEMA would support a rule that seeks to harmonize U.S. rules within the existing international framework.

In closing, MEMA welcomes the opportunity to provide input to your Committee on existing and proposed regulations that have or will negatively impact job growth in the motor vehicle supplier industry. Thank you for your consideration of the issues raised in this letter. If you require additional information, please contact me at your convenience.

Sincerely,

Ann Wilson

Ann Wilson
Senior Vice President, Government Affairs



NANOBUSINESS alliance

January 7, 2011

Via E-Mail

The Honorable Darrell Issa
Chair, House Committee on Oversight and Government Reform
Congress of the United States
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Re: Response to December 29, 2010, Letter to Trade Associations

Dear Congressman Issa:

The NanoBusiness Alliance is an industry association founded to advance the emerging business of nanotechnology and microsystems for corporations, start-ups, researchers, universities, investors, and other stakeholders. We know your Committee has asked various industry groups for suggestions relating to, among other things, policies or regulations issued by the current Administration that may be having a negative impact on job creation or otherwise stifling continued American economic growth.

The NanoBusiness Alliance would like to draw your attention to the issue of nanotechnology, which holds great promise for continued innovation across many sectors of our economy. Unfortunately, as nanotechnology cuts across various sectors of our economy, it has become subject to differing interpretations, definitions, and regulatory approaches across government agencies. This alone would be an appropriate subject for your Committee's inquiry, which we would hope can result, at minimum, in a better coordinated approach to the government's regulation of nanomaterials.

Of perhaps greater concern, however, are some developments at the U.S. Environmental Protection Agency (EPA) that may adversely impact the nanotechnology industry through direct regulatory compliance costs, or more dangerously, by raising unnecessary public alarms through unfounded and inconsistent characterizations of nanotechnology materials.

Specifically, we understand EPA is working on several proposals under the Toxic Substances Control Act (TSCA) that could have an immediate and significant impact on the commercialization of nanoscale materials. These are proposals to impose regulatory requirements on manufacturers of nanoscale materials and/or the nanoscale products they produce. In some cases, such products might warrant further testing or scrutiny, and the NanoBusiness Alliance would welcome an opportunity to work with EPA and other stakeholders to ensure EPA has the information it needs to assist with commercializing products of nanotechnology. Because EPA's current approach to implementing its authority is unclear, we are concerned that regulatory requirements may be imposed unnecessarily.

Part of our concern is that the cost for compliance is potentially very high and in some instances, given the lack of accepted analytical methods, test results may not yield accurate safety data. This could result in prohibitive compliance costs for uncertain improvements in environmental outcomes, and reinforce unfounded characterizations that *all* nanoscale materials are likely to be environmental or health threats.

Likewise, EPA's pesticide program has discussed its intention to label the presence of any nanoscale component in any pesticide product as needing to file an "adverse effect report" -- regardless of any indication or evaluation of risk. Such a regulatory determination will negatively impact the innovation of nanoscale materials in the pest control industry.

We would also like to note that while many countries have been moving forward on the commercialization of nanomaterials (and creating jobs) without regulatory obstacles, much of the development work for the initial research was funded by U.S. taxpayers through activities like the National Nanotechnology Initiative. Certainly, it would be important for the U.S. to benefit from the research funded by taxpayers through job creation here rather than sending the new jobs to other parts of the world that can capitalize on our investments without facing regulatory obstacles.

Sincerely,

Vincent Caprio

Vincent Caprio
Executive Director

NATIONAL ASPHALT PAVMENT ASSOCIATION
NAPA Building ■ 5100 Forbes Boulevard ■ Lanham, Maryland, USA 20706-4407
Toll Free: 888-468-6499 ■ Tel: 301-731-4748 ■ Fax: 301-731-4621
Mike Acott, President

January 24, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
B350A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

Thank you for this opportunity to identify existing and proposed regulations that have the potential to negatively impact job growth in the asphalt pavement industry. The National Asphalt Pavement Association represents the asphalt pavement producer and paving contractor on the national level. The United States has more than 2 million miles of paved roads and highways, and 94 percent of those roads are surfaced with asphalt.

While asphalt pavements serve a national market, they are built by people who live and work in these areas. Asphalt jobs truly are Main Street jobs that cannot be outsourced overseas. Asphalt jobs are also green jobs; asphalt is America's most reused and recycled material, and virtually every worker in the industry is involved in reusing and recycling. The asphalt industry workforce includes asphalt plant managers, administrators, road crews, researchers, engineers, and support personnel, all of whom play critical roles in building and maintaining the roads used by commuters and business every day.

The asphalt pavement industry provides hundreds of thousands of good paying American jobs to workers in communities, towns, and cities across the United States. As production of materials used in the construction of our nation's roads, highways, and bridges declined, so have the jobs. There are now over 1.7 million unemployed construction workers in the U.S., many of whom work in the asphalt pavement industry.

The enclosed chart describes the relationship between asphalt production and unemployment. From 2006 thru 2010, asphalt pavement used in constructing and maintaining roads, highways, and bridges was down 31 percent while construction unemployment increased over 200 percent. There are currently three pending regulations that will impact job creation in the asphalt pavement industry that I would like to bring to your attention.

EPA's Proposed Rule to Reduce National Ambient Air Quality Standard (NAAQS) for Particulate Matter (PM10)

The Environmental Protection Agency's (EPA) recommendation to reduce Particulate Matter (PM10) from the present level of 150 to either 65 or 75 micrograms of dust per cubic meter of air would be difficult, if not impossible, for many industries to meet, including aggregate facilities which supply stone, sand, and gravel in the manufacture of asphalt pavements. Asphalt pavements consist of approximately 95 percent aggregate and five percent asphalt cement. Aggregate facilities already use the best available control technologies to control air emissions from rock crushing facilities. According to the National Stone, Sand and Gravel Association, the only option for aggregate producers to reduce PM10 under the proposed standard would be to reduce aggregate production and/or limit sales. A reduction in aggregate production would lead to a shortage of asphalt pavement used in the construction and maintenance of our nation's highways, roads, and bridges and would lead to significant job loss in the asphalt pavement industry.

Regulation of small combustion engines, boilers, and process units within Area Sources

EPA's Final Rule on setting emission and performance standards for reciprocating internal combustion engines (RICE) in Area Sources would ratchet down emissions at significant cost to the asphalt pavement industry while achieving minimal environmental benefit. EPA's success in air quality improvement has typically come from regulating large stationary or mobile sources, sometimes referred to as Major Sources under parts of the Clean Air Act. Emissions from smaller sources, such as asphalt plants, are often regulated at the state level and often fall under Area Source categories. Typical Area Source industrial source categories adhere to stringent and appropriate emissions requirements -- similar to asphalt plants. However, the most recent proposed and final rulemaking from EPA attempts to restrict use of very small combustion engines, boilers, and process units including those at Area Source categories.

Regulating emissions from these small sources, like small stationary generators, is of limited environmental value. The actual reduction in the level of emissions from a small generator at an Area Source pales in comparison to any slight emissions reductions at larger Major Sources. In addition, the cost borne by small industries such as ours affected by Area Source rules will further depress an industry that is already experiencing significant job loss.

3% Withholding Tax

On January 1, 2012 a new law will require federal, state, and local governments to withhold 3-percent from all payments for goods and services as a guard against possible business tax evasion. The law requires withholding of 3% on all government payments for products and services made by federal, state, and local governments with total expenditures of $100 million or more and affects payments for goods and services under government contracts.

The 3 percent withholding applies to the total contract. For construction contractors, this means the government is withholding funds necessary to complete a project, such as those necessary to pay for materiel and suppliers. Most contractors do not make 3% profit on a contract. This burden calculates to 350 percent withholding on government construction contractors' net income until such time as the government repays what is owed.

In addition, access to capital is a major concern for the businesses in the asphalt pavement industry. The 3% withholding will further compound this problem for businesses by limiting their operating capital and cash-on-hand. The cash flow of each company will be reduced and force the contractor to borrow more money from the banks in a tight lending market. This is not the time to place additional limits on capital while the economy begins to recover.

While the withholding requirement is not scheduled to go into effect until January 1, 2012, it is already proving costly, and such costs will increase exponentially as the implementation deadline moves closer. Businesses are starting to expend resources now in preparation for implementation due to major system and process changes needed for withholding, reporting, and reconciling the hundreds of thousands of affected payments annually. Action is urgently needed to prevent companies from incurring these costs.

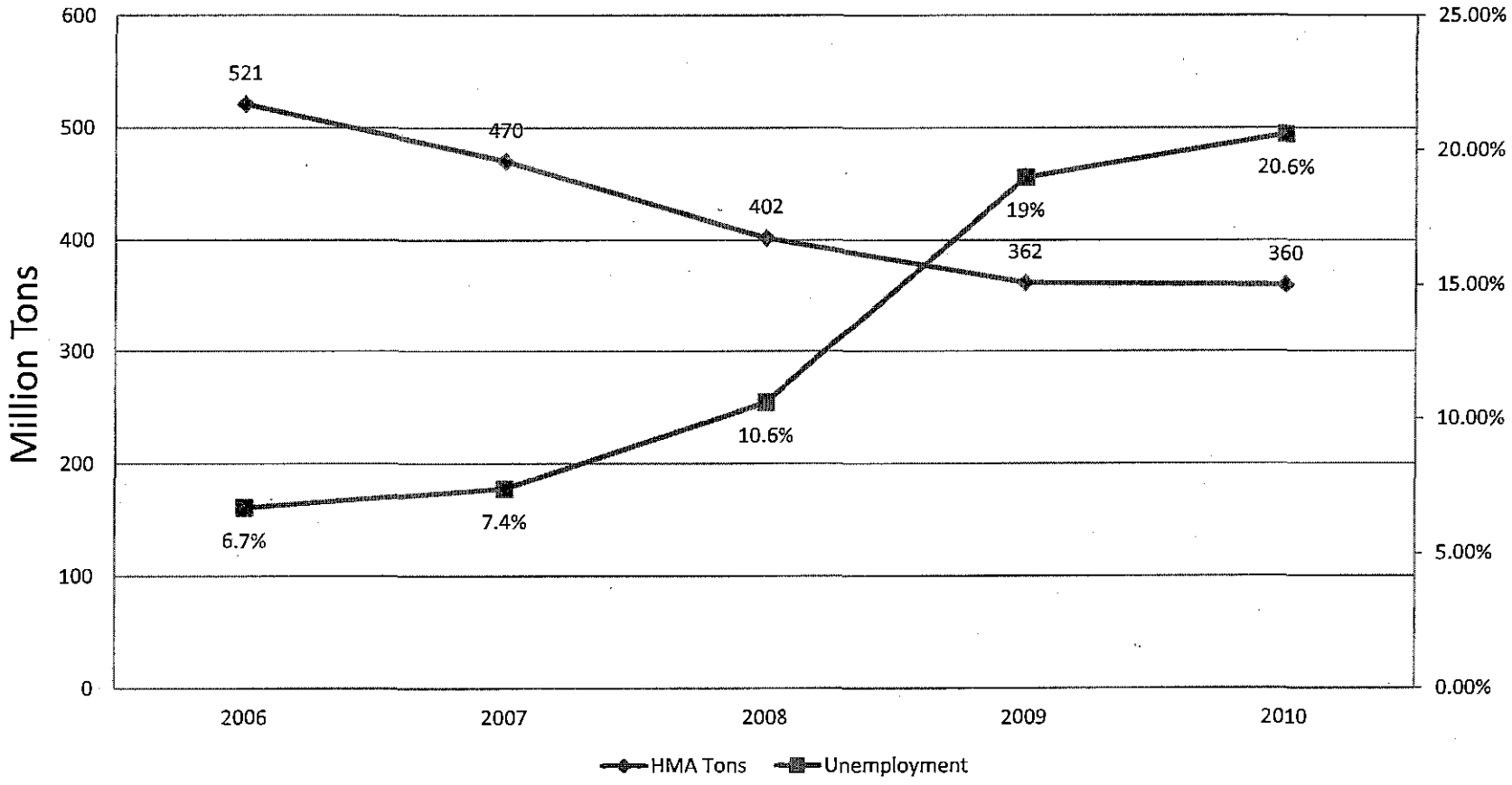
In summary, these three regulations will create business uncertainty and barriers to job creation in the asphalt pavement industry. I sincerely appreciate this opportunity to present the asphalt pavement industry's perspective and look forward to working with you during the 112th Congress to generate growth and jobs in the U.S. economy.

Sincerely,

Mike Acott
President

Enclosure

HMA Tons Produced Annually
Annual Unemployment Rate – Construction Industry
2006-2010



National Association of Home Builders

1201 15th Street NW
Washington, DC 20005

T 800 368 5242
F 202 266 8400

www.nahb.org

January 20, 2011

The Honorable Darrell Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Issa:

On behalf of the over 160,000 members of the National Association of Home Builders, I want to thank you for your aggressive efforts to reach out to the business community for thoughts on federal rules and regulations that should be a part of Congress' oversight efforts in the 112th Congress. As you know, NAHB represents all aspects of the residential construction industry and our members have daily interaction with scores of federal regulations. Because of their experience, our members have an acute understanding of how the federal government's regulatory process impacts real-world small businesses. Given the regulatory environment we face as an industry and as small businesses, we would like to share with you our thoughts on some key regulations that we believe should receive increased federal oversight.

First and foremost, our members remain incredibly concerned about the ongoing credit crisis impacting our industry. As a lawmaker in California, you are well aware of the devastating state of the housing market, and the ripple effect that a poor housing market has on the health of the local and national economy. One key factor in housing's current depressed state has been continued confusion and roadblocks in the banking community over the issue of Acquisition, Development and Construction (AD&C) lending. The lack of lending has stymied recovery of our industry and scores of others. Specific to AD&C lending, our members have spent over two years caught in an 'argument' between banks and federal regulators who take turns pointing fingers at one another when we try to seek answers to the questions of who exactly is to blame for the lack of lending to the construction sector. Our members have been run around a hamster wheel on the question of whether federal banking regulators are pressuring the banks not to lend, whether the local examiners are 'acting rogue against the wishes of the DC chiefs', or if institutions are overhauling and downsizing portfolios independent of regulator/examiner pressure. As citizens, we are limited in our ability to push for answers to this problem, but we believe that Congress has the authority to get to the bottom of the problem and help us to jumpstart our industry and the national economy.

Additionally, we remain vitally concerned about the implementation of the EPA Lead Renovation Repair and Painting Rule (LRRP). The final rule, which took effect April 22, 2010, requires renovation work that disturbs more than six-square feet in a pre-1978 home to follow new lead-safe work practices supervised by an EPA-certified renovator and performed by an EPA-certified renovation firm. Poor development and implementation by EPA has resulted in considerable compliance costs and has

hindered both job growth and energy efficiency upgrades in older homes. Worse yet, EPA has proposed additional job-killing amendments to the rule to require abatement-style clearance testing for post-renovation work and new work practices rules and regulations for public and commercial buildings.

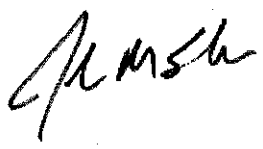
Further, our members have been particularly frustrated with efforts by DOE to push for significant increases in energy code requirements at the recent national model code development hearings, while simultaneously ignoring pleas from the regulated community on how to implement such requirements. Specifically, NAHB and DOE both supported an increase of 30% in minimum energy code compliance for the next edition of the energy code (IECC), but DOE refused to provide NAHB with any information on how it calculated the 30% increase, even though NAHB made the request both formally (through FOIA) and informally (directly to DOE staff) on many numerous occasions. It is unrealistic to expect the regulated community to comply with an energy code mandate if the Agency in charge refuses to even share with builders how to achieve the mandate in the first place.

We know that your request for input has likely generated hundreds, if not thousands, of suggestions from all of the various sectors and industries touched by the federal regulatory structure. We have highlighted several key items in the body of this letter, but also for the sake of thoroughness, we have attached some additional suggestions for your potential review. The items included in the following pages reflect key regulatory items that our membership continues to have concerns about. We look forward to continuing to discuss those items, as well as the items contained in the body of this letter, as you move forward into the 1st Session of the 112th Congress.

We thank you again for your efforts to reach out to industry to bring concerns to light, and we wish you much success as Chairman as your Committee attempts to tackle some of these difficult issues.

Thank you for giving consideration to our views and concerns. Please do not hesitate to contact me at 202-266-8470 or jstanton@nahb.org to further our conversation on the items of concern to the residential construction industry.

Sincerely,



Joseph M. Stanton
Senior Vice President and Chief Lobbyist
Government Affairs

National Association of Home Builders

Onerous Regulations for Home Building & Remodeling Industries

January 2011

Acquisition, Development and Construction (AD&C) Lending

- **Agencies.** FDIC, Office of the Comptroller of Currency (OCC), Office of Thrift Supervision (OTS), Department of Treasury, Federal Reserve Bank
- **Background.** NAHB urges congressional oversight into federal bank regulator activity that without immediate action will be a major impediment to the housing recovery and an increasing threat to the ability of many small builders to survive the economic downturn. The home building industry continues to experience a significant adverse shift in terms and availability on land acquisition, land development and home construction (AD&C) loans, and builders with outstanding loans are facing mounting challenges.
- **Impact.** Lenders are refusing to extend new AD&C credit or to modify outstanding AD&C loans in order to provide more time to complete projects and pay off loans. Lenders themselves often cite regulatory requirements or examiner pressure on banks to shrink their AD&C loan portfolios as reasons for their actions. While federal bank regulators maintain that they are not encouraging institutions to stop making loans or to indiscriminately liquidate outstanding loans, reports from NAHB members in a number of different geographies suggest that bank examiners in the field are adopting a significantly more aggressive posture. Moreover, some institutions appear to be overhauling and downsizing portfolios independent of regulator/examiner pressure.
- **Impact on Home Building.** As a result of this regulatory pressure, the home building industry is having extreme difficulty in obtaining credit for viable projects. Builders with outstanding construction and development loans are experiencing intense pressure as the result of requirements for significant additional equity, denials on loan extensions, and demands for immediate repayment. In short, the credit window seems to have been slammed shut for builders all over the country.

Lead-Based Paint – Renovation, Repair and Painting Rule (RRP), Clearance Testing

- **Agency**. U.S. Environmental Protection Agency
- **Background.** EPA finalized the RRP in 2008 requiring remodelers to be trained and certified, use lead-safe work practices, and keep records for remodeling and renovation work performed in pre-1978 homes. As part of a settlement agreement with interest groups, EPA agreed to amend the 2008 rule by eliminating the "opt-out" provision allowing homeowners with no children under six living in the home to waive the rule's requirements, and doubled the amount of homes subject to the rule. EPA has also proposed amendments to require abatement-style clearance testing as a requirement for certain renovation projects and to establish an RRP rule for public and commercial buildings. Lastly, EPA's original economic analysis relied heavily upon the availability of an improved pre-renovation test kit, supposed to be available in September 2010, but such kit does not exist and EPA has not agreed to adjust its corresponding economic analysis about the burden on businesses.

- **Impact.** EPA estimated the 2008 RRP rule cost at $490.7 million in the first year and between $279.1–301.2 million in subsequent years once fully implemented with a fully qualifying test kit (identified and commercially available). EPA's removal of the opt-out provision and its failure to develop or identify a test kit has resulted in a regulation that will cost an estimated $826.7 million in the first year and between $722.1–779.2 million in subsequent years. [*The removal of the opt-out, according to EPA, adds $336 million in the first year of the regulation and $194-209 million in subsequent years once fully implemented. The lack of a qualifying test kit alone is responsible for an added cost of $250-270 million per year.*]
- **Impact on remodeling.** The remodeling industry is impacted because the rule does not apply to home owners, who can undertake the work themselves without following the rule, thereby increasing the risks of creating a lead hazard and harming children, or choose uncertified "black market contractors" who do not comply with the rule's requirements and avoid the additional costs, making uncertified work cheaper to consumers. This impairs the ability of professionally-trained and certified remodelers to undertake critical energy efficiency and upgrade work in older homes who must compete with DIY and non-compliant "contractors."

Construction & Development Effluent Limitation Guidelines

- **Agency.** U.S. Environmental Protection Agency
- **Background.** In December 2009, EPA finalized Effluent Limitation Guidelines (ELGs) for the Construction and Development (C&D) Industry. The ELG establishes minimum control requirements for anyone requiring a National Pollutant Discharge Elimination System (NPDES) construction stormwater permit issued by EPA or an authorized state. The new rule contains two basic parts: (1) requires all construction sites to use best management practices; and (2) demands a vast majority of developers ensure that stormwater leaving their sites does not exceed a turbidity (essentially a measure of clarity of water) limit of 280 nephelometric turbidity units (NTU) – a standard virtually impossible to meet. NAHB told EPA that the numeric limit was unattainable on most construction sites and costs would be exorbitant, but EPA finalized the rule anyway. NAHB and the Wisconsin Builders Association challenged the ELG in federal court, arguing that EPA relied on improper data and miscalculated the appropriate numeric limit. After reading NAHB's brief and consulting with the EPA, the Department of Justice (DOJ) realized it could not defend EPA's position in court, and EPA had to admit that "the calculations in the existing administrative record are no longer adequate to support the 280-NTU effluent limit." Additionally, EPA stayed the numeric portion of the rule until it can develop a new one. OMB is now reviewing EPA's new draft numeric limit.
- **Impact.** EPA expects all states to incorporate the ELG rule into all NPDES permits by 2014. EPA stated that it believes the 280 limit can be met through a combination of Best Management Practices (BMPs), such as limiting the amount of land disturbed at any one time, or phasing construction activities. Because EPA has limited data regarding the efficacy of these techniques, it is unclear whether the use of these practices will meet the 280 NTU limit on a consistent basis. Although the numeric limit, a crucial part of the ELG rule, has been stayed by EPA, the Agency plans to keep all other aspects of the ELG rule in place, including

compliance deadlines, monitoring, record-keeping, and reporting requirements.

- **Impact on Home Building.** The ELG rule will become a legally binding permitting requirement for all residential construction activities with a project size of 10-acres or greater. This size parameter will include most homebuilding projects. According to the Small Business Administration, the C&D ELG will cost the construction industry $10 billion annually, or up to $15,000 per developed acre. NAHB remains concerned that EPA's "new" NTU limit will also be based on unreliable data and require unfeasible technology to achieve the limit, and therefore continue to have a large price tag.

EPA Regulation of Greenhouse Gas Emissions

- **Agency**. U.S. Environmental Protection Agency
- **Background.** On May 7, 2010, EPA issued its first regulation setting limits on greenhouse gas (GHG) emissions from cars (the "Auto Rule"), as part of a suite of regulations focused on curbing GHGs. Although the Auto Rule is for mobile sources (cars), EPA has interpreted this regulation to trigger requirements for stationary sources, which could include single family and multifamily dwellings, beginning January 2, 2011. In an effort to temporarily exempt small stationary sources, EPA issued the GHG Tailoring Rule in June 2010, however, the Tailoring Rule still allows EPA to revise emissions' thresholds downward to include small sources such as single family or multifamily projects over time. NAHB, along with a coalition of others, filed a legal challenge to EPA's interpretation and NAHB's policy opposes using existing environmental statutes to regulate GHGs. In September 2010, NAHB filed a motion to stay EPA's GHG regulations and on December 10, 2010, the court denied that motion. NAHB supported legislation (S. 3072), sponsored by Sen. Jay Rockefeller (D-WV), to set a two-year moratorium on EPA regulating stationary sources, preventing EPA from taking any action under the Clean Air Act with respect to stationary source permitting or standards of performance relating to carbon dioxide or methane, but the legislation did not receive a vote in the 111th Congress.
- **Impact.** By regulating GHGs from mobile sources as a pollutant under the Clean Air Act, EPA believes it is essentially bound to regulate GHGs from stationary sources as well. This establishes the debate over whether or not GHGs are considered traditional "pollutants" for purposes of regulating stationary sources and, if so, it would be extremely challenging for the Agency to propose things like permitting, new source performance standards, and non-attainment areas for naturally-occurring and globally-constant gases like carbon dioxide, for example.
- **Impact on Home Building**. EPA data shows that 515 new single family homes and 6,400 new multifamily dwellings would exceed the statutory 250 ton-per-year threshold triggering pre-construction permitting under the Clean Air Act for prevention of significant deterioration (PSD). If these new developments require federal permitting, it could thwart the delicate housing recovery that is expected in the next few years.

Stormwater Regulations Revision to Address Discharges from Developed Sites

- **Agency:** U.S. Environmental Protection Agency
- **Background.** Under section 402(p) of the Clean Water Act, the Environmental Protection Agency regulates stormwater discharges from municipal separate storm sewer systems (publicly owned conveyances or systems of conveyances that discharge to waters of the U.S. and are

designed or used for collecting or conveying storm water, are not combined sewers, and are not part of a publicly owned treatment works), stormwater discharges associated with industrial activity, and stormwater discharges from construction sites of one acre or larger. Under EPA's regulations, these stormwater discharges are required to be covered by National Pollutant Discharge Elimination System (NPDES) permits. EPA has initiated a national rulemaking to establish more stringent requirements on stormwater discharges from new development and redevelopment and make other regulatory changes to municipal separate storm sewer systems. It is expected that these regulations will take into account the potential discharges from the site after construction is completed, which is an unprecedented level of regulation. EPA intends to propose a rule in September 2011 and to take final action by November 2012.

- **Impact.** By developing a new stormwater rule, EPA could significantly increase the costs associated with stormwater management for new development and redevelopment.
- **Impact on Home Building.** The homebuilding industry will have to implement long term stormwater flow controls and design sites to manage long term stormwater flow. The cost of homebuilding could rise as these new systems are implemented. The administrative burden on state and local government will also increase as they adopt and manage the implementation of these new policies.

Ozone NAAQS Reconsideration

- **Agency**. U.S. Environmental Protection Agency
- **Background.** EPA originally promulgated a new national ambient air quality standard (NAAQS) in 2008, resulting in a more stringent 0.075 ppm (the previous standard was 0.08 ppm). A number of groups (including NAHB) and states filed litigation challenging the 2008 NAAQS. Then in September 2009, EPA announced it would "reconsider" the 2008 standard while still keeping it in place – despite the fact that the Clean Air Act contains a specific procedure EPA must use to develop a new or revised NAAQS. EPA originally intended to issue this reconsidered NAAQS in August 2010, but has now twice delayed its release. The Agency now states it will return to its science advisors and issue the reconsideration by August 2011.
- **Impact.** EPA is expected to lower the NAAQS from 0.075 ppm to somewhere between 0.070 and 0.060 ppm. A reduction at these extremely low levels would regulate some naturally occurring ozone and would cost states and industries hundreds of millions of dollars to try and comply with the NAAQS. Many more areas of the U.S. would be plunged into nonattainment.
- **Impact on home building**. Home building is affected because construction equipment emissions contain one of the chemical precursors to ground level ozone. States attempting to meet EPA's NAAQS may impose construction restrictions or even outright bans on the use of construction equipment during certain times of the day or during certain seasons. Additionally, tighter controls on other supplier industries results in increased prices for building materials, raising the cost of a home.

Proposed Rule for Coal Ash Residuals (CCR) under RCRA

- **Agency**. U.S. Environmental Protection Agency

- **Background**: In June 2010, EPA proposed a rule to reverse longstanding "beneficial use" policy exempting electric utilities that generate vast quantities of coal ash residuals (CCR) from strict permitting and disposal requirements under the Resource Conservation and Recovery Act (RCRA). EPA previously recognized labeling CCR as a "hazardous waste" under RCRA could halt the emerging "beneficial use" market for products containing CCR, such as drywall, concrete, soil conditioners, and road material aggregates. An amendment to RCRA (Bevill amendment), authorized by Congress, allowed EPA to exempt specific waste streams from RCRA based on eight criteria under which EPA conducted two analyses and concluded CRR and products containing CCR wastes did not pose a threat to human health or the environment. As a result, CCR wastes are covered under Solid Waste Disposal Act (SWDA), enforced by States, not EPA. EPA's current proposal reverses the two Bevill analyses and seeks to regulate "un-encapsulated" (utility wastes) CCR wastes under RCRA, but not CCR wastes that are "encapsulated" (used in construction materials), without clarifying if it would regulate CCR wastes in disposed building materials (after demolition). While EPA recognizes using CCR waste in construction material (wallboard and cement) actually reduces GHG emissions between 12.5-25 million metric tons of CO_2 equivalent per year, the reversal on the "beneficial use" policy risks undermining EPA's efforts to encourage the use of construction material containing CCR and creates confusion for the industry and consumers about whether or not construction materials containing CCR are considered "hazardous wastes" by EPA.
- **Impact**. According to EPA, approximately 40% of all drywall contains CCR wastes and CCR wastes replaces 15% to 30% of cement binding agents used in the formation of concrete. Because various green building rating systems and standards (including the NGBS) give reference to products containing CCR, and award points for its use in programmatic benchmarks for green construction as a recyclable material, the impact of this regulation could be broad.
- **Impact on Home Building**. NAHB members face regulatory uncertainty under EPA's proposal over the long term RCRA status of CCR containing construction materials at demolition and disposal. Builders also face confusion and potential consumer liability risks arising from EPA's position that drywall and concrete containing CCR wastes could be safe in residential use, but is considered a "hazardous waste" under RCRA if stored on an industrial site.

Other Regulatory Concerns

Federal Energy Efficiency Standard; National Energy Building Code

- **Agency**. U.S. Department of Energy
- **Background**. For years, the home building industry has relied upon and participated in the development of consensus-based building and energy codes for new home construction. Most recently, this process has been managed by the International Code Council (ICC). Over the past few years, efficiency advocates, environmentalists, and product manufacturers have used this process to dramatically increase minimum energy code requirements that often outpace affordability and reasonable cost-benefits

to consumers. Furthermore, interest groups have lobbied Congress to pass minimum energy code mandates federally and push States to adopt aggressive energy codes in order to receive federal incentive funding. Because the ever-increasing energy code requirements are disconnected from reasonable energy savings payback to consumers, and unnecessarily increase the cost of new, more energy-efficient homes, NAHB has opposed federal legislation, and has argued against code proposals with ICC, that set unreasonable energy efficiency minimums. Lately, an emboldened DOE, also a stakeholder in the ICC process, has been sponsoring and promoting aggressive energy code proposals (also considered by Congress). In doing so, DOE has purposefully been unwilling, even after receiving Freedom of Information Act (FOIA) requests, to provide calculations and methodologies on how the regulated community can meet the most aggressive energy code increases in history.

- **Impact**. Because the ICC process is not a program with federal oversight, there is little recourse. Until recently, Congress had never considered usurping a State's right to set its own building and energy codes. With renewed lobbying by interest groups, and a federal agency that supports the interest groups' efforts, it has become more challenging to forestall substantial increases in energy efficiency for new homes that have appeared in several pieces of legislation, and that have recently been approved by the ICC. The federalization of the building energy code process will be critical as Congress continues to grapple with setting minimum efficiency standards.
- **Impact on Home Building**. Significant increases in minimum energy code requirements can raise the costs of a new home from $3,000-$15,000, depending on the increase and area. This substantial price jump makes the newest, most energy-efficient homes harder to sell, or completely unaffordable, particularly for lower-to-moderate income families. Relegating families that are the hardest hit by higher energy bills to the least-efficient, older housing is unfair and actually wastes energy. Energy efficiency has to be reasonable and affordable to the consumers that ultimately pay the costs for such requirements – i.e., future homebuyers and homeowners.

Federal Sustainability and Transportation Initiatives

- **Agencies**. U.S. Environmental Protection Agency, U.S. Dept. of Housing and Urban Development, U.S. Department of Transportation.
- **Background**. Ongoing efforts by the Administration to promote an urban-centric, dense, and "green" development standard, called "sustainable communities," have been increasing over the past two years. Combining housing, transportation and energy efficiency/green into one initiative under the term "sustainability" would be handled by a joint, intra-agency program to provide grants, funding, and other government support for housing and development projects meeting specific "sustainability" criteria. The Administration has promoted this approach as a way to both address climate change and to calculate the true "cost" of housing by including transportation using a proprietary model ("housing and transportation index" or "H&T index"). This calculation tool and methodology is not peer-

reviewed and appears to be disconnected from market realities for both builders and consumers. Additionally, such government programs have proven to be heavily reliant upon LEED and other non-ANSI green rating systems without giving equal recognition for the ANSI-approved National Green Building Standard.

- **Impact.** Because the Administration wants to promote the sustainability, it could easily become a criteria requirement for accessing a variety of federal funding and grant opportunities for housing and development projects. This process largely exists outside of the legislature and is often voluntary. However, funneling the government's limited resources for housing by forcing developers to use proprietary standards and calculation modules could prove to be unnecessarily costly, restrictive, and unaffordable for consumers in the long term.
- **Impact on Home Building.** Although efforts and initiatives to promote sustainability have been largely voluntary until now, it could become mandatory in the future. If this federalization of land use and "sustainability" concept filters down and becomes the requirement for accessing all federal housing funds, it could create problems for builders using other green programs that are not proprietary (like the NGBS) and that may not use the H&T index, particularly in rural, non-urban areas, for which the H&T index model is unworkable and inappropriate.

EPA Guidance Concerning Clean Water Act Geographic Jurisdiction

- **Agency**. U.S. Environmental Protection Agency
- **Background.** The Clean Water Act (CWA) provides EPA and Army Corps of Engineers with authority over "navigable waters," which Congress defines as "the waters of the United States." The U.S. Supreme Court has issued three main cases concerning the government's geographic jurisdiction under the Clean Water Act:
    1. *United States* v. *Riverside Bayview Homes, Inc.*, 474 U. S. 121 (1985)
    2. *Solid Waste Agency of Northern Cook Cty. v. Army Corps of Engineers,* 531 U. S. 159 (2001), and
    3. *Rapanos v. United States*, 547 U.S. 715 (2006).

  In *Rapanos*, Chief Justice Roberts suggested that the government develop a regulation that establishes the scope of its authority. Subsequently, (December 2007 and June 2008) the EPA and Army Corps of Engineers developed guidance (not a regulation) concerning the government's jurisdiction. These guidance documents attempted to interpret all three of the Court's opinions. NAHB understands that EPA has drafted a new guidance document that focuses on CWA geographic jurisdiction and this third guidance document has been developed without input from the land development community.
- **Impact.** In *Rapanos*, the plurality noted that "[t]he average applicant for an individual [CWA section 404] permit spends 788 days and $271,596 in completing the process, and the average applicant for a nationwide permit spends 313 days and $28,915—not counting costs of mitigation or design changes." Furthermore, the Court recognized that each year over $1.7 billion is spent obtaining wetland permits.
- **Impact on Home Building**. Currently, there is broad interpretation of the term "the waters of the United States" and broad regulations governing stormwater discharges. Subsequently, a large majority of home builders are required to obtain CWA discharge permits and many land developers must often obtain federal permission to use their private property. Therefore, increasing the number of federal permits required for a construction project would force even

more home builders to deal with the federal permitting backlog and the high price of getting a permit. Such costs and time delays will affect the availability and affordability of new homes.

NCPA
NATIONAL COMMUNITY PHARMACISTS ASSOCIATION

WWW.NCPANET.ORG

January 12, 2011

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2347 Rayburn House Office Building
Washington, DC 20515

Subject: Regulations Negatively Impacting Independent Community Pharmacy

Dear Chairman Issa:

Thank you for the opportunity to submit our views on existing and proposed regulations that have negatively impacted the independent community pharmacy industry, as well as our suggestions on reforming these regulations.

As background, NCPA represents the interests of America's community pharmacists, including the owners of more than 23,000 independent community pharmacies, pharmacy franchises, and chains. Together they represent a $93 billion health-care marketplace, have more than 315,000 employees including 62,400 pharmacists, and dispense over 41% of all retail prescriptions. NCPA members are the primary providers of drugs and pharmaceutical supplies to millions of Americans.

Per your request, NCPA is most concerned about the negative impacts of the following regulations:

<u>Imposing Competitive Bidding for Diabetic Testing Supplies on Independent Community Pharmacies</u>

Future CMS regulations, pursuant to the new health care reform law, will either require independent community pharmacies to participate in competitive bidding for diabetic testing supplies and other products or impose aggressive competitive bidding pricing on independent community pharmacies.

Pending these future regulations, upcoming intermediate regulations will prohibit independent community pharmacies from providing delivery of diabetic testing supplies to homebound beneficiaries. Medicare patients with diabetes rely on convenient access to community pharmacies and homebound patients rely on home delivery by their independent community pharmacist to obtain diabetes testing supplies. However, competitive bidding threatens access to these supplies for patients that obtain them from local neighborhood pharmacies and through home delivery from these trusted pharmacies.

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NCPA supports a permanent exemption for independent pharmacies from competitive bidding, as well as authorization to continue providing home delivery outside of the competitive bidding program. Because small independent pharmacies do not get the discounts that large mail order or chain pharmacies do, if they are not permanently excluded from the competitive bidding program and are not authorized to provide home delivery, this will mean that they will likely drop out of the program, reducing Medicare beneficiaries' access to these supplies.

Burdensome IRS 1099 Reporting Requirements

NCPA supports bipartisan calls for the repeal of the new IRS 1099 reporting requirements on businesses that purchase goods and services ($600 or more) from corporations. These new expanded requirements will result in significant additional paperwork for small businesses, such as independent community pharmacies. Independent community pharmacies anticipate having to file an additional 100 to 200 new Form 1099's under the new law and regulations. To impose this new significant paperwork burden upon small business independent pharmacies only serves to divert resources away from patients and improving health outcomes, and instead directs those resources of time, money and effort toward bureaucratic tax requirements.

Reduced Access to OTC Medicines through Flexible Spending Accounts (FSA)

NCPA supports policies that encourage the use of over the counter (OTC) medications. For that reason, we are concerned with the new healthcare law's provision and IRS regulations, which prohibit consumers from using their pre-tax flexible spending accounts (FSAs) to pay for OTC medicines unless the patient has a prescription. This new requirement will make it more difficult for consumers to access lower-cost OTCs and will possibly discourage them from purchasing such OTC medicines, thereby having a negative impact on independent community pharmacy OTC sales.

Access to the 340B Drug Discount Program by Insured Patients

NCPA supports reforms to the 340B program to assure that these 340B medications, which are required by law to be sold at a significant discount by the manufacturer to Federally-funded clinics and certain disproportionate share hospitals, are used only for the intended populations: uninsured and underinsured Americans.

Within the 340B program, the existing definition of the term "patient" allows certain insured patients to receive low-cost 340B drugs. These insured patients represent significant profits because the 340B entity purchases the drugs from the manufacturers at low cost 340B prices and will receive the same level of reimbursement from insurers as they would have received if the drugs were not purchased at 340B prices. Independent community pharmacies are losing insured patients to 340B entities because the entities are luring patients away through co-pay discounts. We seek to define the term "patient" to include only patients that do not have prescription drug insurance.

NCPA appreciates the opportunity to demonstrate the regulatory burdens faced by independent community pharmacies, as well as the opportunity to propose suggestions and solutions to eliminate these burdens. We appreciate your effort and interest and please do not hesitate to have your staff contact me by email at john.coster@ncpanet.org, or by telephone at (703) 600-1184, if you have any questions. Thank you for your interest in independent community retail pharmacy and the patients that we serve.

Sincerely,

John M. Coster

John Coster, Ph.D., R.Ph.
Senior Vice President, Government Affairs

cc: The Honorable Elijah Cummings

NCPA
NATIONAL COMMUNITY PHARMACISTS ASSOCIATION

January 12, 2011

The Honorable Darrell Issa, Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2347 Rayburn House Office Building
Washington, DC 20515

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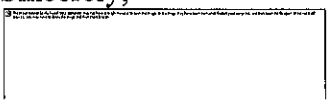
Sincerely,



John Coster, Ph.D., R.Ph.
Senior Vice President, Government Affairs

cc: The Honorable Elijah Cummings

NATIONAL
CONCRETE MASONRY
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January 7, 2011

The Honorable Darryl Issa
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa,

The National Concrete Masonry Association is pleased that your committee is examining existing and proposed regulations that negatively impact the economy and jobs and that you have asked for our assistance in identifying examples and explaining their effect. NCMA, established in 1918, is the national trade association representing the concrete masonry industry. Collectively, the masonry industry represents $23 billion in construction annually and employs 550,000 people in all 50 states.

Presently, two regulations are in the rulemaking process at EPA and OSHA and another being "reinterpreted" at EPA and OAHA that, if they turn out as intended by those agencies, will have significantly negative effect upon job growth in the concrete masonry manufacturing industry:

Coal Combustion Residuals (CCRs), Disposal of – EPA Rulemaking.

Issue. The EPA, with heavy encouragement from forces determined to destroy America's coal industry by political and regulatory means, has zeroed in on the electric power generation industry, which uses an immense amount of coal to produce electricity, seeking to regulate disposal of coal combustion residues (CCRs) under RCRA as a hazardous waste. Associated high handling and disposal costs from such a rule would increase the cost of electric power production as electricity producers convert existing facilities to comply with hazardous waste regulations or convert from coal to other fuels. These costs would be passed on to all consumers, including producers of concrete masonry. In addition to paying more for electricity, concrete masonry producers that consume a considerable amount of recycled fly ash would face the even greater burden of retrofitting plants and equipping workers to handle a "hazardous" waste. EPA appears to favor hazardous waste regulation of CCRs, in spite of intense opposition from industry, consumers, and virtually all the States and other federal agencies (e.g., DOE, DOI, Department of Agriculture), and, if that were not enough, two of its own previous regulatory determinations that fly ash does not warrant regulation as a hazardous waste.

Background. CCR (fly ash) is used in considerable quantity in the manufacture and placement of concrete masonry in the construction industry. Substitute materials are more expensive and less effective than fly ash, putting our industry at a competitive and possibly fatal disadvantage. Despite significant opposition, EPA has continued undeterred for several years and rulemaking is expected to culminate with promulgation of a final rule later this year.

Position. NCMA strongly opposes regulation of fly ash as a hazardous waste, with or without special use exemption.

Impact of Job Growth if Adopted. It is conceivable that a sizeable portion of the concrete masonry industry would be significantly impacted by this rule because the expense of handling fly ash as a hazardous waste. Resulting increased costs could drive concrete users to alternate construction means like building with wood and steel, which could be inferior to concrete products for their applications, more expensive, or both. Job loss could be overwhelming and occur in every state, dramatically affecting an industry already crippled by the lingering effects of the recession.

Occupational Exposure to Crystalline Silica – OSHA Rulemaking

Issue. OSHA is scheduled to publish a proposed standard for occupational exposure to crystalline silica in April. We expect that it will cut in half the existing permissible exposure limit (PEL) for crystalline silica. Workers exposed to excessive levels of respirable crystalline silica for long periods of time can develop silicosis and, according to OSHA, may face an increased risk of lung cancer as well. But the evidence does not establish that these increased risks will be found in workers whose exposures are maintained at or below the current PEL.

Background. Though OSHA has been working on a crystalline silica standard for many years, it has not sponsored a study to determine whether American workers today are at increased risk of developing silicosis (or possibly lung cancer) if their exposures do not exceed the current PEL. Indeed, there is good reason to believe that complying with the current PEL is sufficient to prevent cases of silicosis. And even if crystalline silica exposures can cause lung cancer, a position that remains controversial, exposures that are not high enough to cause silicosis will not increase the risk of lung cancer either.

Position. Health and welfare of workers in our industry is of utmost importance. If scientific studies showed that reducing the PEL is necessary to reduce cases of silicosis and risks of lung cancer, NCMA would be more receptive to OSHA's expected proposal. However, we do not believe the body of science shows that to be the case. The public would be better served, in our opinion, if OSHA focused its resources upon ensuring that all employers are complying with the current PEL. This, we believe, will adequately address any health risks associated with exposure to crystalline silica. Though supplementing the current standard with certain ancillary requirements, e.g., exposure monitoring and medical surveillance, is a separate question, but cutting the current PEL in half is not justified by supporting evidence at this time.

Impact on Job Growth if Adopted. Any further lowering of the PEL will only lead to increased costs for employers, passed-on costs to consumers, lost jobs for workers, and more community hardship – all without doing a thing to provide more protection to workers.

Workplace Noise Control Rule, Reinterpretation -- OSHA

Issue. OSHA has announced its intent to change its official interpretation of existing federal noise exposure standards in a way that would, among other things, fundamentally change the hierarchy of controls to now require "engineering and administrative controls" to maintain noise levels below a minimum daily dose. These controls mean noise cancellation technologies for the individual worker and broad noise reduction for the entire worksite or plant setting. Assuming that meeting these requirements is technologically possible at all, the costs to employers in our industry would be astronomical.

Background. Construction and manufacturing work sites are inherently noisy. Employers have long recognized, if for none other than a productivity standpoint, the importance of

shielding workers from noise as much as possible. Existing noise regulations have worked well. For nearly three decades OSHA has allowed employers to develop hearing conservation programs that rely on "personal protective equipment" if they are more cost-efficient than other engineered and administrative controls but as effective. Our industry is not sure why OSHA has chosen to ratchet up the noise protection regulations at time when hearing loss injuries are low and steadily improving. We do know that the movement has priority at OSHA and suspect, as indicated by the fact that OSHA is attempting to "reinterpret" an existing rule rather than engage appropriately in rulemaking for a new one, that OSHA wants to railroad this through a path of least resistance, namely by reinterpreting an existing rule rather than subjecting a proposed new one to the scrutiny of rulemaking that would require the agency to take stakeholder input into consideration.

Position. Existing hearing protection programs and procedures are effective in protecting workers' hearing. OSHA would not have adopted the existing rules if it thought otherwise. The agency has failed to produce any evidence to justify the proposed reinterpretation. The magnitude of noise mitigation intended by this reinterpretation will significantly increase manufacturing costs for masonry producers and construction costs for contractors building with concrete.

Impact on Job Growth if Adopted. Manufacturing and construction process flexibility would be limited to the point of non-competitiveness for employers, resulting in massive layoffs in our industry.

If you or your staff would like additional assistance in engaging these issues, please contact me or Bill Plenge, Director of Government Relations, at rthomas@ncma.org or bplenge@ncma.org, respectively.

Sincerely,

Robert D. Thomas
President

cc: William H Plenge

NCTO
NATIONAL COUNCIL of TEXTILE ORGANIZATIONS

January 20, 2011

Chairman Darrell Issa
Oversight and Government Reform Committee
Washington, D.C. 20515

Dear Chairman Issa:

On behalf of the domestic textile industry, I would like to congratulate you on your recent appointment to the Chairmanship of the Oversight and Government Reform Committee. On behalf of the domestic industry, the National Council of Textile Organizations (NCTO) appreciates the opportunity to provide information to the committee regarding costly government regulations.

NCTO is extremely concerned with the scope and impact of the volume of regulations that are being proposed or are under review by the federal government. NCTO is carefully assessing the impact of excessive regulations on the U.S. textile industry as a whole. We are concerned that Administrative agencies are working on two separate but important fronts, to create new regulatory burdens through implementing legislation recently passed by Congress or to reinterpret existing regulations in a manner that increases employer cost and reduces competitiveness. These recent actions are causing enormous concern and are creating a tremendous amount of uncertainty among U.S. textile manufacturers. Both aforementioned scenarios have the potential to increase significantly the cost of manufacturing in the United States. As the cost of manufacturing increases, our member companies are forced to reduce or eliminate operations and cut their workforce. Mr. Chairman, we do not believe that a textile mill should close nor should its workers lose their jobs due to government regulation that is over burdensome. Following is an initial list of the major regulatory issues that concern the industry at the current time; we will keep you updated as we obtain additional information about other proposed regulations from our member companies.

NCTO has outlined the Top Five Regulatory Burdens to the U.S. Textile Industry:

1. **Customs and Border Protection – Textile and Apparel Fraud**

The Customs and Border Protection (CBP) agency estimates that $1 billion in duties goes uncollected by the general Treasury each year due to illegal entry of textile and apparel items into the United States.

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Over the past several years, the U.S. textile and apparel industry has been plagued by high levels of fraudulent activity by an increasing number of importers. This has included duty evasion in trade preference areas, undervaluation of apparel from China and front companies posing as U.S. manufacturers. These schemes have had a damaging effect on the domestic textile industry while also cheating the U.S. Treasury out of an estimated $1 billion or more in uncollected duties and penalties in textiles and apparel.

A recent analysis of Mexican denim figures showed that as many as one-third of all denim trousers imported from Mexico were illegally made with Chinese fabric. This single instance cost the U.S. Treasury approximately $50 million in uncollected duties. Mexican Customs reports that billions of dollars worth of Chinese yarns and fabrics are suspected of using the "in bond" system to bring Chinese yarns, fabrics and apparel into Mexico where it is then repackaged as "Made in Mexico" and sent to the U.S. duty free.

In addition, U.S. Customs and Border Protection (CBP) textile verification teams are routinely reporting non-compliance rates averaging 40 percent during plant visits to the CAFTA and Andean countries.

These non-compliance rates are occurring while U.S. Customs and Border Protection (CBP) has steadily moved resources and attention away from commercial textile enforcement. In the Textile/Apparel Policy & Programs Division at the national headquarters staffing is down 40 percent, compared to five years ago, despite an increase in imports and the removal of quotas.

While our national security must always be the top priority, our economic security is also important. We urge you to investigate whether U.S. Customs textile and apparel enforcement focus and capabilities have been allowed to erode to the point that they have damaged our industries economic competiveness and are causing enormous revenue losses to the U.S. Treasury.

2. Consumer Product Safety Commission – Consumer Product Safety Improvement Act

The Consumer Product Safety Commission has issued regulations to implement the Consumer Product Safety Improvement Act (CPSIA) passed by Congress in 2008. The original intent of the statute was to address lead in toys imported to the U.S. from China. However, the law applies to all items, including textiles and apparel, for children up to age 12. In 2010, the commission issued a stay of enforcement on the testing and certification rule for one year after fiber, yarn, fabric, apparel, and retail companies provided the agency extensive testing documentation proving that textiles and apparel do not contain lead regardless of whether the products were made of natural or manmade fibers. Unless the stay of enforcement is renewed, testing and certification will be required beginning in February 2011. Testing and certification

costs for companies are staggering, totaling tens of millions of dollars each year. Such tests will be required for every type of product, in every color and style. Companies at each stage of the supply chain will have to conduct the necessary testing to document that their products are lead free.

Even if the stay of enforcement is extended for testing, the law requires that companies must permanently affix tracking labels to every product sold to consumers. The tracking label must include the source of the product, the date of manufacture, and other information such as a batch or run number. Adding tracking labels will cost industry millions of dollars each year as companies are forced to adapt manufacturing and recordkeeping processes to comply with the law.

3. Environmental Protection Agency – Greenhouse Gases

In 2010, the U.S. House of Representatives passed the controversial American Clean Energy and Security Act, which would have put our domestic manufacturing sector at a significant competitive disadvantage in the growing global economy. The legislation would have increased the industry's energy costs dramatically, while providing China and our other principal overseas competitors with new competitive advantages.

The House of Representatives did pass a comprehensive energy bill that the Administration bolstered as a priority yet in the absence of Senate approval, the Environmental Protection Agency has begun implementing regulations based on the Administration's energy policy. In December, the EPA announced that it plans to begin regulating emissions from power plants and oil refineries. NCTO is deeply concerned that the EPA will use this recent regulatory action as precedent for regulating industrial sources in the future. In addition, these regulations would directly impact our business costs and ability to remain competitive globally.

The new Congress, not the EPA, should develop energy policies that have a business-minded approach that achieves the goal of substantially reducing greenhouse gases and carbon emissions. Because of the issue's complexity, Congress should legislate a solution that simultaneously supports economic growth while making U.S. manufacturing more competitive globally.

In addition, the EPA is also considering regulations to limit greenhouse gas emissions from industrial boilers, which would have a direct impact on textile companies. Boilers are costly and vital components in the production of textile and fabric products. The proposed EPA regulations would force companies to spend time and money to prove to regulators that the facility is below the standards set in the proposed regulation. Regulations are in place already that require companies to meet strict standards, but the new rules would expand coverage of the regulations to minor sources and require extensive testing to verify compliance. Companies have three years

to bring existing boilers into compliance, but new and rebuilt boilers will have to comply as soon as the rule is finalized. Compliance costs and paperwork burdens will be prohibitive for small companies. We must ensure that these unnecessary burdens and regulations are not imposed on businesses.

4. National Labor Relations Board – Posting of Employee Rights

The National Labor Relations Board has proposed a rule that would require virtually all U.S. employers to post information about employee rights under the National Labor Relations Act. Companies that communicate via email or electronic means with employees would also be required to send this information electronically. Unlike other mandatory information that must be posted for employees, the NLRB does not have direct statutory authority to mandate this action. NLRB has proposed the rule because the Board believes (without citing actual evidence) that American workers are largely unaware of their collective bargaining rights. This assertion is widely disputed and NCTO believes that workers are fully aware of their rights in the workplace and clearly understand that workplace complaints can be filed with the NLRB, the U.S. Department of Labor, and the Equal Employment Opportunity Commission (EEOC). Further, NCTO members strive to fulfill the letter and spirit of the laws meant to protect the health and safety of the workers who are employed by the industry. This rule is a clear overstep on the part of the NLRB and means more regulatory burdens on U.S. businesses.

5. Occupational Safety and Health Administration – Occupational Noise Standard

The Occupational Safety and Health Administration has issued a new interpretation of its provisions for "feasible" administrative or engineering controls of occupational noise. Current OSHA regulations allow for workers to utilize personal protective equipment (PPEs), such as earplugs, to be used to block out excessive noise. OSHA regulators are proposing to require businesses to go even further. Incredibly, the proposed regulatory change does not regard the cost of compliance as a major consideration. The proposed regulation provides for two types of controls: administrative and engineering controls. An example of an administrative control could be rotating workers in and out of noisy areas, a sure fire way to disrupt already safe and productive operations by requiring that workers be cross trained on multiple types of machinery. An example of engineering controls could mean installing expensive noise dampening equipment or requiring that machinery and workers be housed in separate locations. This type of 'fix' could be extremely expensive and seems to be a solution in search of a problem that has already been solved by existing workplace practices. Further, these regulations would be economically devastating for those smaller-sized manufacturers that make up the bulk of the U.S. textile industry.

Chairman Issa, NCTO appreciates the opportunity to provide both you and the committee with feedback regarding costly government regulations and waste. As we noted, NCTO will be doing an intensive review of other regulatory burdens and will update you further as we progress.

NCTO would be pleased to meet with you or a member of your committee staff to discuss further our regulatory concerns. If you or your staff would like to be in contact with NCTO, Sarah F. Pierce can be reached at (202) 822-8026 or Spierce@ncto.org.

Sincerely,

Wm. David Hastings

David Hastings
Chairman
Mount Vernon Mills – CEO

Setting Standards for Excellence

The Association of Electrical and Medical
Imaging Equipment Manufacturers
www.nema.org

January 19, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
B350A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa,

On behalf of the National Electrical Manufacturers Association (NEMA), thank you for the opportunity to identify existing and proposed federal regulations that negatively impact jobs, the economy, and competitiveness. NEMA commends you for reaching out to the regulated community to ascertain the real world impacts such regulations have.

NEMA is the association of electrical and medical imaging equipment manufacturers. Founded in 1926 and headquartered near Washington, D.C., its approximately 450 member companies manufacture products used in the generation, transmission and distribution, control, and end use of electricity. These products are used in utility, industrial, commercial, institutional, and residential applications. The association's Medical Imaging & Technology Alliance (MITA) Division represents manufacturers of cutting-edge medical diagnostic imaging equipment including MRI, CT, x-ray, and ultrasound products. Worldwide sales of NEMA-scope products exceed $120 billion. In addition to its headquarters in Rosslyn, Virginia, NEMA also has offices in Beijing and Mexico City.

NEMA has identified several regulatory initiatives that have a significant impact on electrical manufacturers' ability to compete globally and create jobs, with no apparent benefit to the end users of our products. While this list is not exhaustive, it reflects key priority regulations that serve as a good starting point in the ongoing dialogue about the impact of regulation on manufacturing.

General Regulatory Trends

The current regulatory environment can be characterized by several emerging trends which threaten the ability of U.S. electrical manufacturers to remain competitive in the global marketplace. These are summarized briefly below.

Cumulative Effect of Regulations and Timing

Of primary concern is the sheer volume of regulatory initiatives that may affect a particular industry or product sector and the lack of coordination in and among various federal agencies to mitigate the cumulative effect such regulations have on manufacturers. A single facility can be regulated by any number of federal regulators—and their state counterparts—including, but not limited to, the U.S. Environmental Protection Agency (EPA), U.S. Occupational Safety and

Health Administration (OSHA), U.S. Department of Transportation (DOT), and others. The rate at which new regulations are developed and become effective causes numerous burdens for businesses, which often find themselves scrambling to understand the regulations, plan for compliance, educate their workforce, and meet complicated recordkeeping and reporting requirements. This problem is particularly compounded for a small business or manufacturer that lacks the financial and personnel resources to effectively "keep up" with the avalanche of new regulations.

For example, the lighting industry currently is dealing with multiple rulemakings and regulatory activities from within and among various federal agencies that cumulatively strangle its ability to grow and create jobs. The Department of Energy (DOE) has issued a series of rulemakings in the past two years that impact lighting manufacturers, including separate regulations impacting fluorescent lamps, incandescent reflector lamps, high intensity discharge (HID) lamps, fluorescent lamp ballasts, and metal halide fixtures. The lighting industry also is impacted by additional rulemakings mandated by the Energy and Independence Security Act of 2007 (EISA), the Federal Trade Commission's (FTC) lamp labeling rule, new Energy Star requirements, and numerous other environmental, health and safety regulations that have been issued recently or are expected in the near future.

The regulated community would be better served by increased coordination among the agencies in the Executive Branch to time rulemakings and regulatory actions so that a single product sector or industry is not deluged by multiple new regulations all at once.

Failure to Measure Success of Regulatory Actions in "Tiered" Rulemaking

Another regulatory trend that has the potential to severely disrupt the ability of electrical manufacturers to create jobs and remain economically competitive is the "tier" approach to rulemaking. Several agencies have enacted regulations that are phased in over a period of years and have pre-set dates for future rulemakings. However, there is no time built into this approach to evaluate the success of one tier before proceeding to the next. Federal agencies do a disservice to themselves, the regulated community, and the American public by failing to adequately measure whether regulations meet the goals for which they are intended. Regulators should refrain from proceeding to a subsequent tier or phase of a rulemaking until it can be demonstrated that earlier actions proved successful in achieving the projected aims.

Examples of Key Priority Regulations

EPA Regulation of Greenhouse Gas Emissions

On December 7, 2009, the U.S. Environmental Protection Agency (EPA) finalized its so-called "endangerment finding," paving the way for the regulation of greenhouse gas (GHG) emissions under the auspices of the Clean Air Act (CAA). Since then, EPA has proceeded with issuing

numerous rules and, as of January 2, 2011, began regulating GHG emissions from stationary sources. While only the largest facilities will be regulated at first, EPA anticipates expanding such regulation to smaller sources at some point in the future.

NEMA has joined with others in the business community to intervene as a party in a pending lawsuit to review EPA's decision to regulate GHG emissions from stationary sources under the Clean Air Act. NEMA continues to hold that GHG emissions and climate change policy would be better addressed by Congress through the deliberative legislative process than through EPA's misapplication of CAA provisions.

SEC Conflict Minerals Rulemaking

As part of the Dodd-Frank Wall Street Reform Act of 2010, Congress directed the Securities and Exchange Commission (SEC) to write regulations that would require all U.S. issuers that use any elements of gold, tantalum, tin or tungsten in their manufactured goods (whether they manufacture them or contract their manufacture) to disclose that to the Commission and to determine whether or not the minerals were mined in the Democratic Republic of Congo or an adjoining country. If a regulated company is not able to determine the origin of the minerals, the company would be required to report on and audit annually the measures it takes to attempt to determine the origin and chain of custody of the minerals and a description of the products manufactured using the minerals. The SEC issued a proposed rule in December 2010 and a final rule is expected in spring 2011.

On its face, compliance with rules such as those proposed by Congress and the SEC will cost each U.S. issuing company significant financial and time resources. In addition, companies not subject to the rules – many of them being small and medium-sized businesses – will be impacted significantly because they are suppliers of components to larger companies that are issuers. These smaller companies especially do not have sufficient resources to reach back many steps up their supply chains to verify origin of minerals.

OSHA Updates to Standards

The U.S. Occupational Safety and Health Administration (OSHA) has recognized the importance of voluntary national consensus standards and has adopted many of them by reference in its regulations. NEMA supports OSHA's reliance on voluntary national consensus standards, which are effective and relieve the burden on OSHA to "reinvent the wheel" in establishing different product/equipment standards. Unfortunately, many of the references in OSHA's regulations are woefully outdated, and OSHA's failure to update them has prevented advances in workplace safety.

For example, OSHA's current regulations for safety signs in the workplace reference the 1968 version of the American Standard Association (ASA) Z35.1 standard, which in itself is based on

sign formats originally adopted in 1941. A lot has changed in America's workplaces since the original sign parameters were set, and safety signs associated with more modern and complex workplaces are needed to communicate critical—and often detailed—safety messages to an increasingly multicultural workforce. However, while OSHA currently allows the use of the successor standard (American National Standards Institute Z535.2, *Standard for Environmental and Facility Safety Signs,* 2007) because it shares the same basis document as the present OSHA regulation, this acceptance is accomplished via the "de minimum situation" provision, meaning that employers using the modern, more effective signs are found in violation of the existing OSHA regulation. Although no fine is issued, employers are hesitant to use signs that result in a "non-compliance" mark on their records, and OSHA's use of this approach creates obstacles to enhancing safety.

This is only one example of OSHA's regulations reflecting outdated standards. NEMA supports any assistance Congress can provide to OSHA to update its regulations to incorporate current references to voluntary national consensus standards. Reliance on such standards helps reduce the need for agencies to set their own standards, resulting in less regulation and lower costs.

DOT Proposed Rule on Transportation of Lithium Batteries

The Pipeline and Hazardous Materials Safety Administration (PHMSA) of the Department of Transportation (DOT) has to date refused to harmonize its transportation safety regulations for lithium batteries with international regulations that are in place virtually everywhere else in the world and that are supported by, among many others, the U.S. dry battery industry. Instead, PHMSA has pursued a separate rulemaking process, marked by a proposed rule of January 11, 2010, that would go far beyond regulations necessary for safe transport of lithium batteries and severely restrict (and some cases effectively ban) air shipment of lithium batteries and many types of equipment that use lithium batteries. This would have a significant negative impact on U.S. companies' ability to satisfy customers abroad that demand efficient delivery, with knock-on effects for competitiveness and employment. In addition, the safety and economic analyses upon which PHMSA's proposals rely are deeply flawed. In the meantime, the U.S. has fallen behind: its safety regulations now in place for lithium batteries provide less protection than the state-of-the-art and the differences in approach between the U.S. and its trading partners are causing costly friction and uncertainty for U.S. companies that manufacture or use lithium batteries.

CPSC Publicly Available Consumer Product Safety Information Database

With enactment of the Consumer Product Safety Improvement Act of 2007 (P.L. 110-314), Congress directed the U.S. Consumer Product Safety Commission (CPSC) to create a product safety database that would provide consumers with a meaningful tool to research accurate product safety information and understand any reported problems or dangers associated with the use of products. Congress had a robust debate about the database, including discussions about the

types and categories of reporters to the database and how inaccurate information would be handled. Many of the details were left to CPSC to address via rulemaking.

Congress did not intend to pose limits on who could enter reports of harm into the database; however, the final rule issued by CPSC expanded the definitions of certain categories of submitters to implicitly invite reports of harm from reporters who might be politically or financially motivated to populate the database with reports of harm for specific products. For instance, the final rule expanded the definitions of "consumer" to include trial attorneys and "public safety entities" to include consumer advocacy organizations, both of which go beyond their clear public meaning. In addition, while Congress struck an appropriate balance between the speed of publication of reports of harm and the need to ensure accuracy of the database, the CPSC's final rule creates a default for immediate publication of reports of harm, regardless if they remain under review for claims of trade secrets or materially inaccurate information. CPSC should resolve such claims before the reports of harm are published if the database is to provide accurate and useful information to consumers.

NEMA looks forward to continuing a dialogue with you and the Committee about regulation and regulatory policy. In addition, we will be sharing similar examples with your colleagues who serve on many of the respective authorizing committees as you work together to evaluate and improve the regulatory process. To that end, we hope that you will continue to rely on NEMA as a resource and contact us for additional input as needed.

Respectfully,

Kyle Pitsor

Kyle Pitsor
Vice President, Government Relations

NATIONAL GLASS ASSOCIATION

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January 6, 2011

The Honorable Darrell Issa
House of Representatives
2157 Rayburn House Office Building
Washington DC 20515

Dear Congressman Issa,

On behalf of America's architectural glass fabrication and installation firms, window and door dealers, and auto glass replacement and repair firms, we applaud you for your initiative in examining existing and proposed regulations that may have an adverse impact on job growth.

In response to your December 29th request, our industry can identify several regulations that are in need of change. One in particular, however, is causing considerable adverse consequences to our members' revenue and job growth – namely the Environmental Protection Agency (EPA) Renovation, Repair and Painting (RRP) Program, which applies to residential properties built prior to 1978.

Unfortunately, the EPA is now poised to add another onerous mandate to this program in July, 2011: the Lead Clearance and Testing Requirements rule. To aggravate the matter even further, the EPA is expected to apply the entire program to commercial glazing and construction.

It is our view that the proposed lead clearance testing and third-party validation amendment to the lead paint regulations (which took effect on July 6, 2010) goes too far; is causing substantial harm to the vast majority of our nation's window and door dealers; and, is poised to inflict similar harm on commercial glazing and construction companies as well.

We recently surveyed the window and door industry to gauge the impact of the new lead paint rules and to seek input on EPA's latest proposal. Respondents provided a wealth of feedback – overwhelmingly negative – about the new rules, ranging from substantial increases in both hard and soft costs (averaging about $750 per job, far above EPA's own original estimate of a $250 incremental increase), to anecdotal accounts of lost business and other serious repercussions resulting directly from the rule.

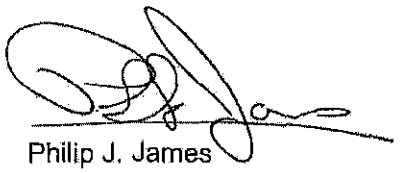
We have documented our concerns associated with the existing lead paint rule, and the projected deleterious effects of the new proposals, directly with the Obama Administration. We implored the EPA to either eliminate the RRP program altogether or, at a minimum, defer its implementation until sufficient data can be collected and analyzed to determine whether or not the new requirements are cost-effective. Our pleas have fallen on deaf ears.

I have attached some of the documents we presented to the EPA and the White House Office of Information and Regulatory Affairs (OIRA) on this issue. If it is appropriate, we can also supply

copies of the many real-world illustrations of harm done by the regulations, which we presented to the EPA staff last year.

While we understand that EPA's lead paint rules were designed to address a defined health concern with respect to lead poisoning abatement, both the rule's broad application and its lack of flexibility have generated unintended consequences that are costing jobs, harming our industry and, by extension, hurting the nation's economic recovery. Several other options, as reported in the Federal Register, were suggested by EPA, which would have safeguarded the public while maintaining job growth. Regrettably, the EPA chose the least practical path for all concerned.

We would be happy to discuss our concerns in more depth with you or your staff at any time. Thank you for your leadership on this issue, and on behalf of our country.



Philip J. James
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National Glass Association and Window and Door Dealers Alliance

NOPA
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January 10, 2011

The Honorable Darrell Issa
Chairman, House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515-6143

Re.: NOPA Response to December 29, 2010, Letter Requesting Identification of Existing and Proposed Regulations that Negatively Impact the Economy and Jobs

Dear Chairman Issa:

The National Oilseed Processors Association (NOPA) appreciates being included as a stakeholder in the important effort being undertaken by the House Committee on Oversight and Government Reform to examine existing and proposed regulations that negatively impact the economy and jobs. We hope the information included in our letter will help the Committee better understand the regulatory issues and concerns of the industry we represent.

NOPA is a national trade association that represents 14 companies engaged in the production of food, feed, and renewable fuels from oilseeds, including soybeans. NOPA's member companies process more than 1.7 billion bushels of oilseeds annually at 63 plants located in 20 states throughout the country, including 58 plants that process soybeans.

Several regulatory issues now before EPA and OSHA are of serious concern to NOPA and its members:

EPA Regulations/Rulemakings

- **EPA's Regulation of Greenhouse Gas (GHG) Emissions**. On January 2, 2011, EPA began regulating GHG emissions from stationary sources under the Clean Air Act. While only the largest facilities will be regulated at first, this action sets the stage for the Agency's future regulation of much smaller sources. Additionally, states are unprepared for the new permitting requirements, which will cause significant delays in permitting of new or modified facilities. This permitting gridlock will discourage manufacturers from building new facilities or expanding their current facilities, hurting competitiveness and discouraging job creation. In the near future, these onerous permitting requirements will be phased in for additional facilities, including hospitals, agricultural establishments and even the smallest businesses.

  Like other sectors of the food industry of which it is a part, the U.S. oilseed processing industry is a high volume, low margin business that operates in an extremely competitive international marketplace. Our industry is also very energy-intensive in terms of power produced onsite and power purchased off the grid. As a consequence, costs commensurate with any carbon reduction program, including the GHG regulatory programs which EPA is pursuing, will threaten the viability of not only the oilseed processing industry and the oilseed growers which supply it with oilseeds, but other sectors of manufacturing in the U.S., encouraging companies to consider moving their operations out of the country.

Two of the largest U.S. customers of the U.S. oilseed processing industry are the domestic livestock and poultry industries. These industries consume over 45 percent of domestic soybean production in the form of soybean meal produced by our industry. A U.S. carbon reduction program would have a dramatic cost impact on food production from farm to fork, including the livestock and poultry industries, and would likely lead to carbon "leakage" to countries with no equivalent carbon reduction programs.

A case in point is Brazil and Argentina, which are home to the principal competitors of both the U.S. oilseed processing industry and the U.S. livestock and poultry industries. Both of these countries have the capacity to expand not only crop production and processing, but livestock and poultry production; neither has a meaningful carbon reduction program. Should a U.S. carbon reduction program increase costs on U.S. oilseed processors and U.S. livestock and poultry producers/processors to the degree that they lose their competitive advantage relative to Brazil and Argentina, all three industries, which are import/export-sensitive, will be forced to cut back their domestic production or consider moving out of the U.S. altogether. Brazil and Argentina will be the likely beneficiaries.

- **EPA's Boiler MACT (Maximum Achievable Control Technology) Rulemaking**. The Boiler MACT rule that EPA is developing will set emission limits for hazardous air pollutants from a vast array of industrial, commercial and institutional boilers using fossil fuels and biomass, to address concerns raised about EPA's original rule in recent court decisions. The rule that EPA proposed in the Federal Register on June 4, 2010, could severely harm our nation's manufacturing sector and those who make their living from it at a time when our economy can least afford any further loss of jobs. Achieving the proposed limits would require mandatory plant upgrades, which would impose tens of billions of dollars in capital costs at thousands of facilities across the country. This would affect a wide range of manufacturing industries, municipalities, universities, and others. According to the EPA, this is the most costly MACT rule ever proposed. Industry estimates the economic impact will be about $21 billion in capital expenditures and billions more in annual costs.

  The standards set forth in the proposed rule do not reflect what real, best performing boilers actually can achieve. These new limits are unsustainable for many facilities and would discourage the use of biomass as a renewable energy source. Oilseed processors support efforts to address serious health threats from air emissions, but we also believe that there are much better ways to accomplish this than EPA has proposed.

  Our industry is not opposing the Boiler MACT rule; rather, we are only asking that EPA use all legal authority provided it in the Clean Air Act to take a more reasonable approach in its rulemaking. In Section 101 of the Clean Air Act, Congress declared that one of the fundamental purposes of the Act is "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Congress provided EPA with discretion in certain areas to carefully design regulations that protect health and the environment while promoting the productive capacity of the Nation. The Boiler MACT rule can and should be redrafted in a more balanced way that protects the environment, jobs, and the industries that are vital to our country's economy.

In December 2010, EPA asked the federal District Court for the District of Columbia for an extension to re-propose the rule, take comments and then finalize the package by April 2012. We welcome the additional time for a review, but the new proposal must ensure that the standards are economically feasible and achievable in practice for manufacturers.

- **EPA's Ozone NAAQS (National Ambient Air Quality Standards) Rulemaking**. The Clean Air Act requires that EPA conduct a detailed review of each NAAQS every five years. EPA last completed a review of the ozone NAAQS in March 2008, following an extensive public input and comment process. At that time, EPA strengthened the existing 0.084 ppm standard to a much more stringent 0.075 ppm; declared that level as adequately protective of human health and the environment; and commenced preparation for the next five-year review.

  In January 2010, the Agency, despite having no new information and being midway through its ongoing five-year review process, proposed lowering the 2008 ozone standard to within the range of 0.060-0.070 ppm. Any standard within EPA's proposed range would dramatically increase the number of "non-attainment" areas nationwide. For local communities, a non-attainment designation can mean a loss of industry and economic development; plant closures; loss of federal highway and transit funding; and increased fuel and energy costs. EPA estimates that the cost of the proposed new standard could add as much as $90 billion per year to the already high operating costs of manufacturing, agriculture, and other sectors. Changing the 2008 standard outside of the normal five-year review process is unfair to businesses and consumers, and unwise.

  EPA has delayed finalizing the rule until July 2012, to allow for continued analysis of the epidemiological and clinical studies used to recommend the ozone standard. We welcome the additional time for a review; however, as with EPA's Boiler MACT Rulemaking discussed above, the final rule must ensure that the standards are economically feasible and achievable in practice for manufacturers.

OSHA Rulemakings

- **OSHA's Combustible Dust Rulemaking**. On October 21, 2009, OSHA published an Advance Notice of Proposed Rulemaking (ANPRM) requesting public comment on a standard to address the hazards of combustible dust. On January 19, 2010, NOPA joined two other associations in commenting to OSHA on the ANPRM.

  The associations agreed with OSHA's statement in the ANPRM that the Agency's grain handling standard, 29 C.F.R. 1910.272, has proven to be an outstanding example of successful government regulation. We urged OSHA not to propose any significant changes to the grain handling standard and to exempt industries within the scope of 29 C.F.R. 1910.272 from any general industry combustible dust standard that might be adopted. We invited discussion with OSHA about the potential of extending the applicability of 29 C.F.R. 1910.272 to the portions of our facilities where it does not currently apply. We concluded by stating that we saw no basis for additional regulation of the grain handling and related industries, or for a new grain handling standard, or a new general industry standard that overlaps and in some respects substitutes for the grain handling standard. Finally, we endorsed a conclusion reached by OSHA in the ANPRM that National Fire Protection Association (NFPA) consensus standards do not make

effective or appropriate regulatory standards, whether adopted by reference or incorporated in an OSHA regulation directly. It is unclear how OSHA will respond to our comments.

We hope that OSHA gives serious consideration to our comments and avoids a regulation that would severely harm our industry and those who make their living from it at a time when our economy can least afford any further loss of jobs.

- **OSHA Injury and Illness Protection Program.** OSHA is also developing a new regulation that would mandate a standard for employers' safety and health programs, referred to as an Injury and Illness Prevention Program (I2P2). Such a concept is expected to be proposed in the spring of 2011 and would have sweeping ramifications on all aspects of both workplace safety enforcement and the promulgation of new regulations. We are concerned that this new proposal from the Agency may not take into account the efforts by employers who already have effective safety and health programs in place or how this new mandate would disrupt safety programs that have measurable successes. Based on preliminary information from the Agency, this proposal may allow OSHA investigators to substitute their judgment of the employer's plan on how to achieve compliance and whether some "injury" in the workplace should have been addressed in some way, even if it was not regulated under a specific standard, or did not amount to a "significant risk" as required under the OSH Act.

- **OSHA's MSD Recordkeeping Rulemaking**. On January 29, 2010, OSHA published a notice in the Federal Register announcing a proposal to revise the Agency's Occupational Injury and Illness Recording and Reporting Rule by restoring a column on the OSHA Form 300 to better identify work-related musculoskeletal disorders (MSDs). On March 30, 2010, NOPA joined 18 other associations on extensive comments to OSHA raising a wide array of concerns with the proposal, including concerns that:

  - It contains no workable definition for MSDs that will allow employers to identify and record them, as they would with other injuries. This will result in employers recording injuries that will be inconsistent with OSHA's statutory authority, which allows the Agency to require employers to record only significant injuries related to the workplace.

  - It would remove an exemption currently in place that allows employers to not record "minor musculoskeletal discomforts" even if they put the employee in some form of restricted duty to keep the condition from worsening, or for the employee's comfort (such moves would ordinarily trigger a recording requirement). This will result in a great expansion of the cases employers will have to consider and record - literally any level of musculoskeletal discomfort would now trigger the recording requirement if there is an appropriate relationship to the workplace - but the Agency did not include it in the regulatory changes, or request comments on this change.

  The comments also point out how OSHA has grossly underestimated the costs of this proposal, particularly on small businesses, and accordingly should have conducted a small business review panel to learn more about how small businesses would deal with this regulation.

- **OSHA's Proposed Interpretation Entitled "Interpretation of OSHA's Provisions for Feasible Administrative or Engineering Controls of Occupational Noise**." On October 19, 2010, OSHA published a notice announcing its intention to change its official interpretation of workplace noise exposure standards and enforcement. Currently, OSHA regulates the acceptable levels of noise to which employees are exposed in the workplace. To protect employees against hearing loss, the Agency has maintained a decades-old policy that allows employers to provide "personal protective equipment" such as ear plugs and ear muffs as well as engineering controls like noise-dampening equipment and muffling systems to effectively supplement their operating practices. However, OSHA now plans to abandon this practice in favor of requiring employers to implement all "feasible" controls – with "feasible" meaning "capable of being done" – regardless of the costs or effectiveness of currently-used personal protective equipment.

  According to the notice, these changes must be adopted regardless of the costs unless an employer can prove that making such changes will "put them out of business" or severely threaten the company's "viability." If the Agency implements the proposal, employers that have not made every systematic change "capable of being done" will be forced to divert resources away from job creation, investment and expansion, to make sweeping changes to their workplaces. We are troubled that OSHA is pursuing this change outside the formal rulemaking process and, as such, is not following the Administrative Procedures Act that provides opportunity for full and fair public input and requires sensitivity to small entities.

* * * * * *

Thank you again for including NOPA as a stakeholder in the important effort being undertaken by the House Committee on Oversight and Government Reform to examine existing and proposed regulations that negatively impact the economy and jobs. Please do not hesitate contact me or David Ailor, Executive Vice President, Regulatory Affairs, if you have any questions.

Sincerely,

Thomas A. Hammer

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President

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President

NPRA

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January 10, 2011

The Honorable Darrell Issa
Chairman,
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Issa:

Thank you for the opportunity to respond to your December 29, 2010 letter regarding regulations that have the potential to impact job growth and job retention for domestic fuels and petrochemicals manufacturers. Fuels and petrochemical manufacturers are certainly facing challenging economic and international competitiveness times. We look forward to working with you and other Members of Congress to help sculpt a regulatory environment that provides the maximum protection to public health and welfare without destroying existing or obstructing the creation of new jobs in the United States and adversely impacting our nation's energy and manufacturing needs.

NPRA, the National Petrochemical & Refiners Association, represents high-tech American manufacturers fueling and building America's future by producing reliable, affordable and efficient refined petroleum products and petrochemicals. Every hour of every day, millions of Americans use products made by the members of NPRA. NPRA members serve the American people responsibly and effectively by manufacturing virtually all the fuel and petrochemicals produced in the United States to meet the nation's needs, strengthening economic and national security, and providing jobs directly and indirectly for over 2 million people.

NPRA members companies have made significant investments to enhance air quality and overall environmental protection in the United States. Fuels manufacturers alone have spent nearly $50 billion to remove sulfur from gasoline and diesel fuel and to provide reformulated gasoline. NPRA members have additionally addressed requirements for low Reid Vapor Pressure gasoline, including specially-blended fuels required under State Implementation Plans pursuant to the Clean Air Act ("CAA"), and have enabled advanced vehicle exhaust systems to achieve greater efficiencies in reducing air emissions from combustion. These efforts have contributed to substantial local and national air quality benefits. Overall, total emissions of the six principal air pollutants in the United States have been reduced by 54 percent since 1980 and our nation's citizens have experienced a two decade-long drop in ozone levels across the country.

While domestic fuels and petrochemical manufacturers have invested and will continue to invest substantial capital on environmental protection, NPRA member companies are now facing a tremendous onslaught of regulatory activity aimed at both the creation of new regulations and the expansion and modification of existing ones. We understand various regulatory agencies have a difficult task of balancing the need for effective regulation with the demands of meeting sometimes conflicting decisions from the courts, positions of public interest groups and even newly enacted laws. However, the size, scope, and cumulative burden of current and impending regulatory activity is creating significant uncertainty and could, if left unchecked, threaten the continuation of a substantial portion of domestic refining and petrochemical production and well-paying existing American jobs, and the security of the nation.

EPA Greenhouse Gas (GHG) Regulation through the Clean Air Act

As you know, EPA early last year issued greenhouse gas ("GHG") standards for cars, which EPA contends automatically triggers Clean Air Act ("CAA") regulation of all newly constructed or significantly modified stationary sources that produce GHG emissions. Under the language of the CAA, millions of businesses will eventually be required to obtain GHG permits and tens of thousands would need additional permits before moving forward with ANY construction and modification projects. EPA attempted to limit the scope of the regulation by "tailoring" the rules so that they would only apply to sources with the potential to emit 100,000 tons per year ("tpy") of GHGs. However, we believe this "tailoring" action is illegal under the language of the CAA, which requires regulation at much lower thresholds (250 tpy for small sources and 100 tpy for large sources). Even if EPA's tailoring rule were deemed to be legal and state concerns with EPA actions were somehow set aside, targeting larger sources would still result in negative consequences for states and the recovering economy. These larger businesses not only provide jobs of their own, but also the raw materials, fuels and supplies small businesses require and demand for the goods and services they provide. EPA's move will likely create significant delays in the state permitting process. It also creates significant uncertainty that will undoubtedly hamper job growth and business investment.

Further, contrary to statements from a few state air quality agencies, vague federal guidance on how to regulate these stationary sources coupled with other CAA permitting requirements (New Source Review, Maximum Achievable Control Technology or "MACT," revised SO_2 and NO_2 National Ambient Air Quality Standards or "NAAQS") will likely overwhelm state and local permitting offices, hampering business growth and expansion. As a South Carolina official eloquently pointed out, "the permitting process will become so backlogged as to create a permitting moratorium. New business and industry will not be built; existing business will not expand; and existing business and industry will not [make repairs] if such repairs require a permit."

In addition, EPA's vague federal guidance on how to implement GHG regulations provides no certainty regarding what measures businesses can actually employ to control emissions and whether or not permits will actually be approved and issued in certain circumstances. The new regulations will require businesses to implement Best Available Control Technology ("BACT") for GHGs. The problem is that BACT is not yet established for GHGs. EPA provided, at best, vague guidance regarding what could constitute BACT. The Agency noted it will be up to states to determine whether or not permit applications indicate a clear plan for implementing BACT. EPA's actions create significant uncertainty and threatens to delay permitting decisions due to what will likely be a slew of new litigation concerning whether or not issuance of a particular permit will actually lead to the employment of the "best" achievable control technology. One example of this BACT uncertainty is availability of carbon capture and sequestration (CCS) technology. In the recently issued BACT guidance and a recent BACT training video, the Agency identified CCS as a "demonstrated" technology. Yet as recently as 2008, the Agency acknowledged that the technology would not be commercially available until 2025. Experts in other agencies, particularly the Department of Energy ("DOE") concur with this assessment.

Formosa Plastics, an NPRA member company located in Texas, recently sent the Texas delegation a letter detailing the impact of the uncertainty associated with EPA's GHG regulations. Formosa has been planning a $1 billion expansion of its operations in Point Comfort, Texas. The expansion would create between 700 and 800 construction jobs, 357 service jobs and another 125 full time industrial operations and maintenance jobs. Formosa Plastics noted that the uncertainty associated with EPA's GHG regulations will effectively "kill these pending new U.S. based manufacturing projects...prevent the creation of new construction and manufacturing jobs...[and] eliminate the additional property and income taxes the projects and jobs will generate."

GHG New Source Performance Standards for Refineries and Utilities

In addition to the previously mentioned GHG regulations for new or significantly modified sources, EPA has recently agreed to a settlement with environmental activist groups and several states that will require EPA to propose regulating GHGs under a section of the CAA that calls for the creation of New Source Performance Standards ("NSPS"). EPA is initiating this action solely focusing on electric utilities and refineries at this time. NSPS requires specific environmental emissions performance standards for new and existing facilities that are subject to regulation under the act. A GHG NSPS would require any regulated facility to install Best Demonstrated Technology ("BDT"). EPA is required to consider cost when developing an NSPS.

NPRA members have several concerns with this action. First, the Agency continuously mentions that utilities and refiners together account for upwards of 40 percent of GHG emissions. This statement is misleading, because the overwhelming majority of that figure is attributable to utility emissions. Stationary source refinery GHG emissions are

roughly 4 percent of our nation's GHG emissions. More importantly though is the fact that as with BACT, the industry does not know what will constitute best "demonstrated" GHG control technology. Like BACT, such a situation could lead to significant delays as the interpretation of "demonstrated" is litigated throughout various courts. In addition, while EPA does have to conclude that BDT is actually economically feasible, the statute allots EPA a fair amount of discretion on this front. The refining industry frequently has significant disagreements with EPA over the Agency's interpretation of what is and what is not actually cost-effective. Given these factors, a GHG NSPS may create just as much uncertainty as BACT, threatening jobs and investment.

Conflicting Regulations

The challenges EPA's impending GHG regulations pose are exacerbated by the fact that they actually create conflicts with existing regulations. These conflicts could jeopardize a refiner's ability to comply with federal fuel formulation regulations. Refiners will occasionally have to make modifications to our operations that are necessary to make clean fuels. Such upgrades could trigger CAA GHG regulation, putting these projects in jeopardy.

The regulation of GHGs under the CAA creates the opposing situation of requiring facilities to install advanced technologies that increase energy use for the formulation of increasingly complex motor fuels, while simultaneously penalizing these same facilities by requiring them to control GHGs, emitted by this same required technology, through excessively expensive and intrusive regulation. For example, sulfur is a component of crude oil. "Hydrotreating" is the principal technology used to reduce sulfur in petroleum products (i.e., gasoline, home heating oil or diesel). This and other such technologies, in turn, require energy consumption with associated greenhouse gas emissions. The production of extra hydrogen necessary for the hydrotreater results in an increase in GHG emissions because the hydrocarbon source (natural gas or refinery fuel gas) must be "cracked" to recover the hydrogen - releasing large amounts of CO_2. Therefore, a petroleum fuel sulfur reduction standard will increase the carbon footprint at refineries.

A similar scenario applies to reducing the benzene content of gasoline. Benzene-reduction technologies exist, but at a "cost" of a larger carbon footprint at refineries. EPA is considering "Tier 3" standards that could reduce the sulfur and benzene content of gasoline. Several states have passed laws or promulgated regulations to reduce the sulfur content of home heating oil. Production of cleaner petroleum fuels means an increase in GHG emissions at refineries. Therefore, refineries will be penalized for installing expensive equipment to produce cleaner-burning petroleum fuels and will be discouraged from making additional investments in these technologies in the future. A recent example of this was a refinery expansion project which was publically criticized for increasing its carbon footprint even though the expansion would result in the reduction of each of the criteria pollutants that it emitted.

Ozone National Ambient Air Quality Standards (NAAQS)

An existing requirement of the CAA calls on EPA to revise National Ambient Air Quality Standards ("NAAQS") every five years and revise them "as may be appropriate" in accordance with sections 108 and 109(b) of the CAA. NAAQS regulates six criteria pollutants, namely ozone, carbon monoxide, lead, sulfur dioxide ("SO_2"), nitrogen oxides ("NOx") and particulate matter ("PM"). In relation to ozone regulation, the NAAQS primarily deals with controlling emissions of volatile organic compounds ("VOCs") and NOx, because they are ozone precursors. Primary NAAQS must be set at a level "requisite to protect the public health" with "an adequate margin of safety." Secondary NAAQS must specify a level of air quality "requisite to protect the public welfare from any known or anticipated adverse effects." Failure to achieve NAAQS has significant ramifications for states and localities. If an area is designated "non-attainment," it becomes subject to several new regulations, such as a requirement to use reformulated gasoline ("RFG") in a given area, much more stringent permitting, and required implementation of "Reasonably Achievable Control Technology" ("RACT") on major stationary sources emitting VOCs and NOx. Depending on the level of non-attainment severity, states and localities can actually be denied federal transportation funding.

EPA recently finalized a new NAAQS ozone standard of 0.075 ppm in 2008 following substantial and rigorous scientific review. This standard itself is extremely stringent and will be difficult to meet. Despite this recent move, EPA decided to ignore the regular five year review cycle and revisit this recently enacted standard – before it is even implemented. The Agency has suggested it would impose a 0.060 or 0.070 ppm ozone NAAQS requirement. It is making this reconsideration without the review or evidence of any new science that would indicate the need for such a move. Setting NAAQS at such levels would establish a standard that in some areas is approaching current ozone background levels, even in rural areas. In other words, even if every industrial source of ozone-producing emissions in some areas shut down, it would still be difficult for those areas to comply with an ozone NAAQS at the low end of the range being considered. Such a standard would have a significant and adverse impact on the economy. A Manufacturers Alliance study found that a 0.060 ppm standard would cost over $1.6 trillion and could lead to the loss of 7.2 million jobs economy wide over the next decade. EPA's own numbers indicate the cost of a revised ozone NAAQS standard will range from $19-$90 billion annually.

As with the GHG standards, the new ozone NAAQS will pose challenges in relation to other regulations. The federal Renewable Fuel Standard ("RFS") will require increasing the amount of ethanol in the fuel supply each year for the next 25 years. The more ethanol there is in a region's gasoline, the higher evaporative, or VOC, emissions from automobile engines will be. Further, ethanol-fueled vehicles tend to run "hotter", with resultant increases in NOx emissions. In other words, the ethanol mandate will make it more difficult to meet the new ozone NAAQS requirements over the coming years because emissions of both ozone

precursor pollutants will increase. Fuel modifications to meet these divergent regulatory objectives will come at a considerable cost and will likely lead to higher consumer fuel costs.

In relation to the ozone NAAQS, the facts are that ambient air quality has been dramatically improving, even as the nation's economy has grown. Even EPA highlights the fact that between 1980 and 2008, total emissions of the six principal air pollutants has dropped 54 percent. Measures of ambient concentrations of ozone have dropped 25 percent in that time, while national GDP has increased 126 percent, vehicle miles traveled are up 91 percent and energy consumption has increased 29 percent. In addition, EPA's decision to reconsider standards for ozone NAAQS continues to ignore the vast majority of new studies which indicate current standards are protective of public health. However, there could be significant adverse health and welfare impacts associated with continued unemployment and economic decay. Given these facts and the recent revision to the standard, there is no need for EPA to pursue a more stringent standard and threaten economic harm; particularly because the CAA does not mandate an ozone NAAQS review at this time.

EPA Disapproval of Texas "Flex" Permits Under the CAA

Texas has one of the most stringent air permitting programs in the nation – a program that actually predates the CAA. Facilities in Texas have been receiving CAA operating and construction permits from the Texas Commission on Environmental Quality under a "flexible permit" (or "flex" permit) framework. In 1994, Texas submitted its State Implementation Plan ("SIP") to EPA as required under the CAA. The SIP tells EPA how a state plans to meet its obligations under the CAA. The Texas SIP proposed providing air permits to facilities in a manner that allowed them to make changes to certain units in a facility without having to go through an extensive permitting process, provided the change would not result in an emissions increase that would exceed the facility's plant-wide emissions allowance. Although EPA is technically supposed to approve or deny a SIP within 18 months, the Agency did not initiate any action on the Texas permit in this time frame. However, in order to avoid a de facto permit moratorium, the Agency expressed support for the state rules and indicated that Texas could issue "flex" permits in accordance with the regulatory requirements of the CAA. Given these assurances, Texas moved forward with its "flex" permit program.

The Texas "flex" permit program was successful in reducing both air emissions and regulatory costs. From 2000 to 2008, the state experienced a 46 percent decrease in NOx emissions and a 22 percent drop in ozone. These reductions are significantly better than the national average of an eight percent ozone decrease and a 27 percent drop in NOx emissions. Despite this success, EPA decided last year that the Texas program was not permissible under the CAA. The Agency told the state "flex" permits would not be valid and that EPA would take over permitting if the state did not tell facilities to "de-flex," or completely retool their operating permits. Permitting inconsistency and delays that will result from this action

will create significant investment uncertainty around compliance, growth and efficiency projects – hampering job and economic growth in the process.

E15 and the Renewable Fuels Standard (RFS)

In November, the EPA published a decision for approval of a partial waiver, with conditions, that would allow gasoline containing 15 percent ethanol – known as "E15" - to be sold into the marketplace for use in vehicles that are model year ("MY") 2007 and later. This decision could create significant problems in the marketplace. First of all, EPA does not have the legal authority to grant a partial waiver. Section 211(f)(4) of the CAA is clear on this point, since it states EPA has to determine that any fuel or fuel additive 'will not cause or contribute to a failure of ***any*** emission control device or system (emphasis added)"; not just whether or not a fuel or additive will cause or contribute to the failure of some emission control devices and not others. NPRA is suing EPA based on this fact. More importantly, because E15 would theoretically be sold under the same canopy as regular gasoline, there is a high likelihood of consumer misfueling. This is a concern because several studies show gasoline blends containing more than 10 percent ethanol could lead to engine damage in older vehicles and non-road engines, such as those in chainsaws, lawnmowers, boats and snowmobiles. Ironically, an increased ethanol blend could also damage older cars' catalytic converters, installed to reduce emissions. In addition to engine and catalytic control damage, studies have shown that as ethanol content in fuel increases, it burns hotter and is more corrosive. This combined effect creates the possibility for serious physical injury to persons who may misfuel and potential physical damage to tanks and fuel dispensing equipment. Sufficient testing to assess the impact of these fuel blends on all automobiles – both old and new – and non-road engines has not been completed.

Industries ranging from outdoor power equipment manufacturers, to automakers to food producers have all expressed concern over EPA's E15 waiver. However, EPA has ignored ongoing testing related to E15 and made a premature decision to approve the fuel. The same decision to approve E15 also contains a proposal for E15 misfueling mitigation. Therefore, EPA made a decision knowing that it would cause problems and initiated a rulemaking at the same time to mitigate the problems that the Agency created. The Agency could have decided to deny the request to approve E15 as gasoline, but chose to approve it partially and conditionally. This decision has put the petroleum industry and consumers at significant risk and the mitigation proposal, a cautionary label posted at retail, is a woefully ineffective warning device.

The previously mentioned problem with EPA's E15 decision is one example of the numerous problems associated with an ill-crafted federal renewable fuels standard ("RFS"). The existing program contains an extremely aggressive schedule for introducing a fairly large amount of ethanol into the marketplace. Such an implementation schedule raises questions of feasibility, liability and other economic costs for both refiners and consumers. If the existing RFS program is carried out without changes, it will create great market and

economic uncertainty, which will in turn threaten additional refining investment and job growth.

Chemicals Regulation

In relation to chemicals regulation, there has been little transparency into the regulatory process at EPA in recent years. For example, EPA no longer holds public meetings when crafting regulations. In the past, EPA routinely held public meetings to allow policy debates to be conducted in an open and transparent manner. To further highlight the lack of transparency, EPA has announced plans to "manage" the risks of certain chemicals in commerce, but the regulated community has no idea how EPA has come to select the chemicals for management. EPA lacks any kind of consistent and transparent manner in which to identify and prioritize chemicals for regulation. In fact, the current administration abandoned the chemical prioritization process the Agency had committed to under the Safety & Security Partnership of North America, in favor of a behind-closed-doors process that relies more on the media than science to identify chemicals of concern.

EPA also expects the chemical manufacturing sector to shoulder the lion's share of the burden for the entire economic supply chain by increasing reporting and other regulatory requirements, even though chemical manufacturers cannot control how chemicals are used and distributed after they are sold in commerce. Under the key law that allows EPA to regulate chemicals in commerce, the Toxic Substances Control Act (TSCA), EPA has proposed requiring chemical companies to report information on how every chemical is sold and used in this country, which is impossible for those companies to know. EPA also expects chemical manufacturers to pay for all very costly chemical testing based on parameters and assumptions of use not established or vetted by these manufacturers. Therefore, this testing likely will yield very little benefit in determining risks associated with the intended use of these chemicals. Further, EPA-designed testing may produce results modeled on use scenarios not intended by these manufacturers, potentially misinforming or misleading consumers regarding the actual risk associated with a product or chemical.

The lack of transparency and manufacturer engagement coupled with the proposed regulatory burden and unsubstantiated tested associated with chemicals management create great uncertainty for our nation's chemical manufacturers. With chemicals being one of our country's top ten exports, it is imperative that any update to TSCA or other chemical regulation be based on sound science, involves all stakeholders, and recognize the importance of chemicals to continued innovation and the health of our economy.

On the chemical facility security front, the Department of Homeland Security ("DHS") seems to be moving forward with regulatory attempts to require Inherently Safer Technology ("IST") mandates. While IST sounds good in concept, proposals to mandate such a practice have essentially equated to backdoor chemical substitution proposals that do not actually address security risks. Rather, they simply shift risks to different parts of the

supply chain. An IST mandate could cause some companies to abandon billions of dollars of investment in refinery units, ultimately leading to closure of refineries that could not afford to replace those units with unproven technologies or operate without the unit. NPRA member companies have raised questions as to why DHS is proceeding down this path and under what authority.

Additional Environmental Challenges

In addition to these major issues, domestic fuels and petrochemical manufacturers also are facing additional environmental challenges. EPA continues to work on a Boiler MACT rule that has been criticized for being overly stringent, costly, and in many cases simply unachievable; several studies by CIBO, AF&PA and even the Commerce Department have shown the proposed boiler MACT rule could lead to significant job losses. Reasonable revisions to the proposal could prevent potential job losses due to onerous regulations that do not result in significant health benefits. Finally, while information requests, recordkeeping and reporting are necessary aspects of any environmental program, we are concerned about onerous requirements that simply demand significant company staff time, but yield little benefit. NPRA's refining member companies are subject to a new information collection request (ICR) as part of EPA's re-proposal of its refinery Residual Risk Rule. The Agency is requesting a significant amount of information from every refinery in the US, even though the Agency already has much of this information already available. The information and testing required to complete this request is burdensome and costly, particularly to smaller refining companies. The ICR seeks far more information than is needed as the basis for the rules that EPA is required or reasonably expected to develop over the next few years.

Thank you once again for allowing me to provide you with information on how the current regulatory environment is impacting domestic fuels and petrochemical manufacturers. If you have any additional questions, please do not hesitate to contact me directly or have the appropriate staff person contact NPRA's Senior Director of Government Relations, Brendan Williams, at 202-457-0480.

Sincerely,

Charles T. Drevna
President, NPRA

Non-Ferrous Founders' Society

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January 13, 2011

The Honorable Darrell Issa
Chairman, Committee on Oversight & Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Issa:

The Non-Ferrous Founders' Society (NFFS) is pleased to respond to your request for comments identifying proposed or existing regulations that are negatively impacting jobs, the economy and our economic competitiveness. While our list of regulations is certain to encompass several that will be cited by other organizations, we trust we will not be overly duplicative in our comments. To begin, therefore, allow me to provide some background on our industry as a point of reference.

As a whole, the foundry industry has played an important role in the history of industrial progress, invention, and innovation. It is not an exaggeration to state that metal castings have been the engine that has driven the American economy for the past 225 years. Castings have been part of nearly every new industrial and technological development, and figure prominently in virtually every other segment of the economy – whether industrial or agricultural.

Non-ferrous castings in particular are found almost everywhere - from your kitchen sink and kitchen appliances to the engine, drive train, and dashboard of your automobile. While primarily small businesses, non-ferrous foundries operate in nearly every state of the union, collectively employ more than 150,000 workers, contribute more than $20 billion to the nation's Gross National Product, and are believed to produce as many as 100,000 distinct products and/or components.

Your letter cites administration estimates as to the cost (referred to as the hidden tax) of the 43 new regulations promulgated by federal agencies in Fiscal year 2010 to be more than $28 BILLION - on top of the estimated $1.75 T**RILLION** burden from existing regulations. - . Too often, the cost of government regulations places a disproportionate burden on small business, and that burden creates an even more significant impact on small manufacturers like non-ferrous foundries.

The Non-Ferrous Founders' Society and its members endorse and support your committee's efforts to implement a broad program of regulatory oversight and reform of new and existing regulations that negatively impact the economy and jobs. Our organization has been tracking several proposed regulations and new initiatives by federal agencies that are of immediate concern to our members, and to which we therefore now draw the committee's specific attention.

OSHA's Noise Proposal

OSHA has stated that it plans to enforce noise level standards in a dramatically different way by redefining what is deemed "feasible" for employers to reduce overall noise in the workplace. More troubling, the agency plans to require implementation of these actions unless an employer can prove making such changes will put it out of business.

OSHA's proposal discards a long-running and effective policy that allows an employer to provide "personal protective equipment" such as ear plugs and ear muffs to protect its employees from high noise levels if such devices are more cost-effective than engineering controls like noise-dampening equipment and muffling systems. The proposed definition change would force employers of all sizes to make physical plant changes regardless of costs – even if such changes would not be fully effective in reducing noise levels in the plant, thus requiring that PPE must continue to be used. Preliminary estimates by manufacturers estimate that total compliance costs for fully implementing this proposal could reach billions of dollars.

Perhaps most troubling, OSHA is pursuing this "reinterpretation" outside the formal rulemaking process and therefore is not following the Administrative Procedures Act that provides the opportunity for full and fair public input. While OSHA has recently extended the deadline for stakeholder comments (the Non-Ferrous Founders' Society is currently gathering data from our industry to file comments by the March 21st deadline), the agency is under no obligation to actually consider the comments they receive prior to enacting the change in the definition of "feasible engineering controls." Moreover, the requirements of SBREFA would also not apply.

OSHA Recordkeeping and Enforcement

In 2010, OSHA issued a proposed rulemaking indicating their intent to pursue broad regulation of ergonomics issues. The proposal called for changes to recordkeeping rules and added a new column to OSHA 300 logs to require employers to track "work-related" musculoskeletal disorders (MSDs).

The proposal uses a very broad definition of recordable MSDs which could lead to a significant expansion of the conditions that must be captured on employer logs and require employers to treat subjective symptoms as potential recordable incidents. It can also result in inaccurate data regarding the degree to which incidents are work related. The new requirement also forces employers to make medical determinations regarding the nature of potential MSDs and whether or not they are work related. It also undermines an employers' ability to conduct preventive work transfers to help keep more serious conditions from developing.

Despite decreasing injury and illness rate statistics, in an effort to address perceived safety and health problems in the workplace OSHA implemented a new Severe Violator Enforcement Program (SVEP) and increased civil penalty amounts. Comments from the Assistant Secretary of Labor for OSHA at the time stated "OSHA penalties must be large enough to discourage employers from cutting corners or underfunding safety programs to save a few dollars."

The SVEP included a more intense examination of an employer's practices for systemic problems, increased inspections in these worksites, including mandatory follow-up inspections and inspections of other worksites of the same employer where similar hazards and deficiencies might be present.

Being "pro-safety" is no more "anti-business" than being "pro-business" means one is "anti-safety." Workplace injuries are expensive, and high accident rates cause insurance premiums to soar. A commitment to increased safety actually helps create a better business environment., but the Non-Ferrous Founders' Society rankles at the presumption by some policymakers at OSHA that most employers don't care about safety, and the only way to change that is to adopt a "*you're guilty unless you prove yourself innocent*" regime of regulatory enforcement.

OSHA's Proposed *Combustible Dust* Rule

On October 21, 2009, OSHA published an Advance Notice of Proposed Rulemaking (ANPRM) requesting public comment on a standard to address the hazards of combustible dust (29 CFR Part 1910, RIN 1218–AC 41). The Non-Ferrous Founders' Society submitted comments on January 19, 2010. Some of the points raised in our comments include:

• That no single definition of Combustible Dust can accurately cover all materials, and that any combustible dust standard for non-ferrous foundries enacted by OSHA should clearly define which metals ***are*** and which ***are not*** known to be combustible rather require that determination to be made separately by each and every non-ferrous foundry or ingotmaker that may or may not be subject to the rule.

• That OSHA should set industry-specific standards for combustible dust rather than attempt to create a single, all-encompassing, one size fits all approach to the issue. OSHA has already followed that approach by creating industry-specific standards for combustible dust in grain handling, sugar refining, wood milling, and other industries.

• That incorporating consensus standards developed by other non-government organizations by reference into an OSHA standard often serves no useful purpose other than to provide a baseline for the imposition of fines and penalties after an incident or explosion occurs.

OSHA held a series of follow-up Stakeholder Meetings in support of the Combustible Dust rulemaking, but there has been little recent progress on the proposed rule. The Society has been told that the agency plans to convene a SBREFA review, though perhaps not until April. Given the significant impact that the proposed rule would have on small foundries, OSHA must be required to conduct a full and open SBREFA review before proceeding.

EPA Re-Definition of Solid Waste

During the final months of the previous administration, the Environmental Protection Agency (EPA) finalized the Definition of Solid Waste rule, aimed at promoting recycling by providing new exemptions to its Resource Conservation & Recovery Act (RCRA) regulations for wastes now considered to be "solid" wastes. But Earthjustice, on behalf of the Sierra Club, filed suit over the rule in the U.S. Court of Appeals for the District of Columbia Circuit, alleging the exemptions went too far and could lead to dangerous "sham" recycling at facilities located disproportionately near low-income and minority communities.

In a settlement with environmentalists, EPA has since committed to propose a new rule revising its regulatory definition of solid waste by June 2011. This move builds on steps the agency had already taken in response to the activists' lawsuit since the current administration took office, but sets aside nearly two years of collaboration with industry that went in to the development of the 2008 rule. At that time, EPA had estimated that about 5,600 facilities handling approximately 1.5 million tons of hazardous secondary materials annually would be impacted by this rule and that the regulation would save approximately $95 million per year for the affected industries. Announcing the new rule, the assistant administrator for the Office of Solid Waste and Emergency Response said, "*Removing barriers to legitimate recycling is good for business and the environment. This rule will help conserve natural resources, save energy, and reduce costs.*"

EPA Boiler MACT Rule

EPA has estimated that there are more than 200,000 boilers operating in industrial facilities, commercial buildings, hotels and universities located in highly populated areas and communities across the country. The agency is under a current court order to issue final rules on January 16, 2011 and is asking the court to extend the schedule to allow the agency to finalize the rules by April 2012. This broad-reaching proposal could cost manufacturers over $20 billion in compliance costs and place hundreds of thousands of jobs in jeopardy. Furthermore, many manufacturing groups have expressed concerns that the proposed standards could almost never be achieved by any single, real-world source.

After reviewing the data and more than 4,800 public comments, the agency believes it is appropriate to issue a revised proposal that reflects the new data and allows for additional public comment. EPA has therefore asked the Federal District Court for the District of Columbia for an extension to re-propose the rule, take industry comments, and finalize the rule by April, 2012, but the Sierra Club filed a motion with the court opposing the delay request, saying that the agency is already 10 years overdue issuing the rules and any further delay would harm public health. NFFS supports the agency's request for an extension and welcomes the additional time for a review, but maintains that any new proposal must ensure that the standards are economically feasible and achievable in practice for manufacturers.

Revised EPA NAAQS for Lead

In October, 2008, EPA substantially reduced the national ambient air quality standards (NAAQS) for lead. The revised standards are *10 times tighter* than the previous NAAQS. The agency reduced the level of the primary (health-based) standard from 1.5 micrograms per cubic meter (µg/m3), to 0.15 µg/m3 (measured as total suspended particles, or TSP). EPA also revised the secondary (welfare-based) standard to be identical in all respects to the primary standard, and revised the averaging time and form of the lead NAAQS. These are the air quality statistics that are compared to the level of the standards to determine whether an area meets or violates the standards.

EPA changed the calculation method for the averaging time to use to 'rolling' three month period with a maximum (not-to-be-exceeded) form, evaluated over a three-year period. This replaced the prior approach of using calendar quarters. A rolling three month average considers each of the 12 three-month periods associated with a given year, not just the four calendar quarters within that year.

The agency also announced plans to redesign the lead monitoring network to assess compliance with the revised the standard, requiring state and local monitoring agencies to conduct monitoring taking into account lead sources that are expected to, or have been shown to, exceed the standards. At a minimum, monitors were recommended to be placed in areas with sources of lead emissions greater than or equal to one ton or more per year, to measure the maximum concentration. The agency estimated that 236 new or relocated monitoring sites would be needed to satisfy the monitoring requirements, but in December of 2010 EPA issued a final rule requiring far fewer lead monitors in large urban areas and other sites than initially proposed.

EPA had originally estimated that at full implementation of the final lead NAAQS in 2016, the costs that year would fall somewhere in a range from $150 million to $2.8 billion. Of course, the Clean Air Act expressly prohibits EPA from considering costs in setting or revising National Ambient Air Quality Standards.

National Labor Relations Board Rules

Efforts to pass the *Employee Free Choice Act* (aka the "*Card Check*" Rule) failed in the last Congress. As a consequence, labor unions and the administration have begun turning to the National Labor Relations Board (NLRB) and other federal agencies to help reverse what they view as an increasingly hostile atmosphere for organizing new members.

Addressing the AFL-CIO's Executive Council last August, the President made it clear that if card check legislation could not pass in Congress, his Administration would use to use executive orders and federal agencies like the NLRB to implement the goals of the legislation. His recess appointment of Craig Becker - a former associate general counsel for the SEIU and later staff counsel for the AFL-CIO – to the NLRB had given clear early evidence to the administration's intent, and NLRB's decisions since Mr. Becker's appointment have clearly demonstrated his pro-union bias. Most recent among those actions is the planned rule announced by the NLRB requiring businesses to post notices in employee break rooms or other prominent locations to explain a worker's rights to bargain collectively, distribute union literature, or engage in other union activities without reprisal.

We believe the move to issue this broad rule signals a more aggressive posture by the labor board, which has typically made policy on a case-by-case basis after deciding individual labor-management disputes. The notices under the latest proposed rule also make clear that workers don't have to join a union and outline other legal protections against union intimidation or misconduct. Similar posters are already required to be displayed in the offices of government contractors and subcontractors under a White House executive order that took effect in June. That directive was one of the first executive orders the president signed shortly after taking office.

Last November, NFFS joined in filing an amicus brief in response to the National Labor Relations Board's request for advice on its 2007 decision in the *Dana Corp.* case. In that case, the Board had ruled that employees must have 45 days after their employer recognizes a union based on card-check authorizations to file a petition to decertify the union or to support an election petition from another union. The Board underscored having a secret election as the preferred method of determining the majority status of a union. The majority found that card-check procedures are much less reliable as indicators of employee free choice on union representation than secret elections.

The NLRB is now reconsidering that ruling. The amicus brief argues that *Dana* should not be overruled. Individual free choice regarding whether to be represented by a third party is a necessary precondition to collective bargaining. In nearly 25 percent of the 54 Dana elections conducted by the Board, employees exercising free choice voted to reject the employer's initial, voluntary recognition.

While some NFFS members are already unionized, but nonetheless the Society believes that a private ballot remains the fairest way to determine whether or not a company's employees support union certification. The brief as filed argues that without a card-check review process in

the form of a secret election, "*employees are left ... with the likelihood of peer pressure and/or coercion, lack of information, no measurement of unit-wide employee sentiment at the same point in time, and no assurance that the alleged, resulting majority is an accurate reflection of free choice.*"

Mr. Chairman, our list of proposed or existing regulations that negatively impact jobs, the economy and our economic competitiveness could certainly go on, but rather than continue in that vein at this juncture the Non-Ferrous Founders' Society would simply like to restate that we fully endorse and support your committee's efforts to implement a broad program of regulatory oversight and reform. This is a fresh change from the current regulatory environment, which seems to equate seeking input from manufacturers and employers as equivalent to collaborating with the enemy.

The Society, its members and I will welcome any opportunity to continue to dialogue with you and your committee about specific regulations or regulatory policy in general. Please do not hesitate to call upon us again if you feel the input and/or comments of our association and its members may be of value to your committee's efforts.

Sincerely,

James L. Mallory, CAE
Executive Director

JLM/

Owner-Operator Independent Drivers Association

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January 10, 2011

The Honorable Darrell Issa
Chairman, Committee on Oversight and Government Reform
c/o Kristina M. Moore, esq
2157 Rayburn House Office Building
Washington, D.C. 20515

Re: Existing and proposed Regulatory Actions Impacting the Trucking Industry

Dear Mr. Chairman,

Thank you for your correspondence requesting assistance in identifying existing and proposed regulations that have and could potentially impact job growth in the trucking industry. We welcome this opportunity and look forward to working with you in the future on this and any other developing issues. Please do not hesitate to contact us should you require more information.

As you are aware, the Owner-Operator Independent Drivers Association is a not-for-profit, non-partisan organization representing the interests of small business trucking professionals and professional truck drivers throughout the United States and Canada. Currently, OOIDA is comprised of nearly 155,000 members nationwide, with more than 5,800 of those members residing in the State of California. In order to effectively evaluate job growth or unemployment in the trucking industry, one must look at the composition of the industry as a whole and understand it in a larger context to truly see how deleterious excessive and unnecessary regulation can be to the availability of drivers ready, willing, and able to accept shipments. In short, the overwhelming majority of trucking companies based in the United States are small businesses, as 96% of all motor carriers have less than 20 trucks in their fleet and 87% of motor carriers have fleets of just six or fewer trucks. In fact, owner-operator fleets averaging little more than one truck represent nearly half of the total number of Class 7 and Class 8 trucks operated in the United States. Unlike large motor carriers who typically hire numerous employees and can offset overhead costs, the costs associated with regulation are absorbed by the small business truckers and directly impact their bottom line.

The trucking sector is a highly regulated industry and faces continual regulatory challenges in 2011 that are certain to adversely affect the profitability of small business truckers. In these economic times, well intentioned efforts by regulatory agencies can often cause job losses downstream of those regulatory actions. Specifically, OOIDA would like to address current regulatory actions from the United States Environmental Protection Agency (USEPA), National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA).

Greenhouse Gas Emissions & Fuel Efficiency Standards for Heavy-Duty Vehicles.

USEPA and NHTSA have booth embarked on a regulatory effort to set both fuel mileage and greenhouse gas (GHG) standards for newly manufactured heavy-duty trucks beginning in 2014. While OOIDA does not disagree in concept with efficient use of energy resources and

commensurate reductions in GHG, we are not optimistic that this regulatory effort will do anything more than significantly increase the cost of newer heavy-duty vehicles, perhaps even increasing the purchase price of those vehicles beyond what many small businesses can afford. That eventuality has dire consequences for employment in the manufacturing sector that builds new trucks and ironically will actually have the converse effect of not reducing GHG emissions by further discouraging the purchase of new equipment that already has already seen significant cost mark-ups related to previous USEPA emissions standards. This fear is not unfounded and in fact actually played out in the marketplace during the past 4 years. In advance of USEPA 2007 and 2010 heavy-duty truck engine emission standards, the trucking industry did a significant "pre-buy" of older vehicles to avoid costly increases and uncertainty related to the newer technology.

The Truck Manufacturers Association reported that sales of Class 8 trucks, which weigh over 38,000 pounds, were down from nearly 284,000 trucks in 2006 to approximately 100,000 in December of 2010. Not only has this decreased employment in the manufacturing sector of the trucking industry, the decrease in sales has led to a significant drop in tax revenue provided to the Federal Highway Trust Fund. The trucking industry contributes 36.1% into the HTF and of that percentage 7.8% is collected from truck and trailer sales not including a 12% Federal Excise Tax collected when a new truck or trailer is purchased. An example of the loss of revenue that stems from decreased truck sales comes from a study in 2008 by the American Road and Transportation Builders Association (ARTBA). According to this study, there was a shortfall of $3 billion in the Highway Trust Fund after the EPA implemented the 2007 NOX emission standards—$2.4 billion of that total amount was associated with the decrease in truck and trailer sales.

The current USEPA/NHTSA rulemaking is intended to emulate in large part a rulemaking from the California Air Resources Board (CARB) to address GHG emissions from heavy-duty vehicles. In spite of industry objections to the one-size-fits-all mindset exemplified by this type of rulemaking, much less costly ways to achieve the goals of increased fuel efficiency and GHG reduction are ignored in favor of a "command and control" regulatory structure. Some of the favored technologies that will add to the cost of a new truck are speed limiters, super single tires, aerodynamic devices such as side skirts, Alternate Power Units (APUs) and associated automated engine shut-down requirements. All the technological features will increase the cost of newer trucks yet both agencies have purposely ignored the single greatest means to increase fuel efficiency and reduce GHG – that is driver training. The National Academy of Sciences identified driver training as the single largest way to improve fuel efficiency – up to 35 percent – yet that has been completely ignored by both agencies in their combined rulemaking.

Certain regulations being promulgated by agencies may at first glance not appear as financially onerous until they are viewed from the cumulative burden placed on the trucking industry.

For example, FMCSA has promulgated a limited rulemaking that requires Electronic Onboard Recorders (EOBRs) to be installed on trucks of certain motor carriers for compliance with federal hours-of-service (HOS) regulations. The agency has communicated it will likely move towards a wider mandate. This rulemaking is couched under the guise of improving highway safety even though HOS violations or "fatigue" involvement in commercial motor vehicles (CMVs) involved fatality accidents account for only 1.4 percent of the total.

This is a potential rulemaking that will cost the trucking industry well in excess of one billion

dollars up front plus monthly fees. Considering how the trucking industry is constituted with its reliance on small business motor carriers, the vast majority of these increased costs will fall on small businesses for little or no appreciable benefit in highway safety.

FMCSA is also currently looking at banning the use of hand held cell phones by CMV drivers. In the current rulemaking the agency is requesting comment on a wider ban that could include hands-free cell phone use. While OOIDA provisionally believes in reducing activities that lead to distracted driving, banning hands-free cell phone use will significantly burden small business motor carriers who are dependent on that technology platform to efficiently operate their businesses. Larger fleets subscribe to various fleet management systems that so far have escaped regulatory oversight. Regulatory efforts that reduce the efficiency of how businesses operate should be based on a conclusive connection between the distraction and accident causation, not just public opinions.

Collectively, these kinds of rulemakings are obtrusive and costly to small-business truckers with little or no scientific substantiation regarding improved highway safety.

Cross Border Trucking Program: A One Way Street.

As evidenced by the U.S. Department of Transportation's recent issuance of a "Concept Document" for a future cross-border trucking program with Mexico, the Administration is pushing forward with efforts to provide Mexico-domiciled trucking companies and truck drivers with full access to U.S. highways. Their efforts are an affront to U.S.-based small business truckers who must contend with a consistently increasing regime of safety, security and environmental regulations. Those regulations also significantly increase the cost of operations for U.S.-based companies and drivers. Mexico-domiciled trucking companies and drivers simply do not contend with a similar regulatory regime in their home country nor must they contend with the corresponding regulatory compliance costs that encumber their U.S. counterparts.

Thus far Mexico has failed to institute regulations and enforcement programs that are even remotely similar to those in the United States. To ensure the safety and security of U.S. citizens as well as a level regulatory playing field with U.S. businesses, Mexico-domiciled trucking companies and truck drivers should be required to comply with the same level of safety, security and environmental standards that already apply to U.S.-based companies and drivers, not only while they are operating in the U.S., but also in their home country.

The primary objective of NAFTA is to ensure that the North American nations enjoy the prosperity that would result from the free flow of goods across borders. In order to achieve this end the agreement seeks to ensure that each country affords the others access to economic opportunity. Under current conditions in Mexico there is little opportunity or willingness on the part of U.S. truckers to compete there. Until the Mexican government is able to significantly diminish the rampant crime and violence within its borders, commits to addressing its deteriorated infrastructure, and promulgates regulations that significantly improve its trucking industry, U.S. truckers will be unable to benefit from the anticipated reciprocity. If a new cross-border trucking program were implemented in the near future, U.S. truckers would be forced to forfeit their own economic opportunities while companies and drivers from Mexico, free from equivalent regulatory burdens, take over their traffic lanes.

To illustrate the folly and adverse impact for small-business U.S. truckers, much of the fresh vegetables consumed in the U.S. during winter months originate in Mexico. Currently, U.S. truckers pick up that produce at warehouses located in certain border cities and deliver to buyers throughout the country. It is not an unfounded fear that significant volumes of imported produce would bypass traditional distribution methods to take advantage of the unfair lower costs offered by Mexico domiciled motor carriers. Many OOIDA members are certainly going to be displaced in the market by foreign competitors that do not face the same regulatory burdens. Those burdens extend well beyond safety oriented regulatory burdens. They include costs such as self-employment taxes, unemployment taxes and workers compensation.

To date the Administration has failed to call upon the Mexican government to raise the regulatory standards for its trucking industry or to establish a feasible work environment for U.S. truckers in Mexico. Instead, the Administration has sought to find ways to accommodate the operations of Mexico-domiciled trucking companies and drivers on our side of the border.

Conclusion.

While this letter does not constitute a complete list of the myriad of regulatory issues promulgated by federal agencies that negatively impact the economy and job growth, they are examples of certain issues that needlessly increase cost for small business truckers and in some cases will harm job growth in our industry. When regulatory hurdles needlessly increase costs – especially when alternatives exist that are significantly less onerous and costly, small business trucking competitiveness is eroded and their communities are economically hurt by them having less of their own money to spend as they see fit.

I appreciate the opportunity to respond to your inquiry of this topic and welcome any further questions that would assist you in your capacity as Chairman.

Respectfully,

Joseph F. Rajkovacz

Joseph F. Rajkovacz
Director of Regulatory Affairs

PLUMBING MANUFACTURERS INTERNATIONAL

January 10, 2011

Chairman Darrell Issa
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Subject: *DOE Proposed Definition on Showerheads & DOE Waiver of Federal Preemption*

Dear Chairman Issa:

Thank you for contacting Plumbing Manufacturers International (formerly Institute) to identify proposed regulations that negatively impact the economy and jobs. PMI is the leading industry trade association of plumbing products manufacturers in the United States. PMI has over 30 member companies who provide jobs to thousands of workers in over 20 states and manufacture 95% of all the plumbing products sold in the United States.

I believe that we have two issues the Committee will want to examine in this regard. The first involves the U.S. Department of Energy (DOE) unilateral action significantly changing the definition of a "showerhead". This is a dramatic and highly visible case currently pending before OIRA. PMI has argued that the DOE action to reinterpret their longstanding definition of "showerhead" without a formal rulemaking process constitutes a total disregard of the Administrative Procedures Act and will result in hundreds of millions of dollars in recurring costs and a corresponding loss of job to the plumbing industry and to plumbing contractors.

The second issue involves the recent notice issued by DOE on December 22, 2010 waiving federal preemption for water conservation standards under 42 U.S. C. 6297 with respect to any state regulation concerning the water use or water efficiency of faucets, showerheads, water closets and urinals.

In this letter, we offer you just a brief overview of the key facts on each of these issues. Should you desire, we can provide additional documentation for your review. Further, our industry is prepared to brief your staff and to provide whatever additional support is necessary to advance your reforms.

DOE ACTION on SHOWERHEAD REDEFINITION: In May, the U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy provided ***just a 30 day notice*** soliciting comments on their draft "interpretative" rule which would significantly change the definition of "showerhead' (Docket No. EERE-2010-BT-NOA-0016 [Federal Register -5/19/10 - Volume 75, Number 96, Page 27926]). It is noteworthy that with only 30 days notice, over 1,000 comments were received from a broad cross section of the nation including: business, the public sector, and citizens. Only a handful of the comments support the DOE's rule. The rule has been pending before OIRA since early September 2010 with no determination as of this date. This issue has been highlighted by a broad spectrum of the press.

PMI maintains that this DOE action will have the effect of eliminating various types of showering systems in homes across America, including hand-held showers, body sprays, and shower systems. Many of these products are also used in hospitals, nursing homes, schools, the military and other therapeutic and medical facilities.

Plumbing Manufacturers International
1921 Rohlwing Rd., Unit G, Rolling Meadows, IL 60008, U.S.A. • Tel: 847-481-5500 • Fax: 847-481-5501

Additionally, the ban on these types of shower systems would have a significant impact on plumbing manufacturers, contractors, installers, and retailers across the country. Especially hard hit would be consumers, particularly seniors and members of the disabled community who rely on these types of shower systems as a functional necessity.

Chief among our concerns is the process DOE has relied upon to implement this proposal. We believe that a change of this magnitude should NOT be exempt from the full and formal notice and comment requirements of the Administrative Procedures Act. DOE's proposed "*interpretative*" rule would negate the generally accepted definition of a showerhead that has existed for decades. With only a 30-day comment period and no stakeholder meetings, DOE will effectively make it illegal for manufacturers to sell most, if not all, multi-head shower systems in our country.

Moreover, by making this change via an interpretative bulletin, rather than formal rule making, DOE will potentially jeopardize the validity of shower systems already installed and approved by code officials throughout the country and interdict products already on order and on store shelves. Lastly, it will eliminate the opportunity for consumers to have a choice in determining what type of showering system best suits their individual needs. These showering systems have been available to consumers for over 40 years.

PMI and our member companies are WaterSense partners. We are committed to the efficient and sustainable use of water; however, given the impact that the agency proposal will have on the American public, we strongly urge your committee to examine DOE's attempt to redefine by fiat its showerhead rule.

DOE WAIVER OF FEDERAL PREEMPTION for WATER EFFICIENCY STANDARDS on PLUMBING PRODUCTS (Docket No. EERE-2010-BT-STD-WAV-0045)*:* Right before the Christmas holiday, the U.S. Department of Energy announced in a posting in the Federal Register that it is ending Federal preemption of state water conservation requlations that has been in effect since Congress passed the Energy Policy and Conservation Act (EPCA), Public Law 94-163. In so doing, DOE made the determination that this action is not a "significant regulatory action" under Executive Order 12866. Furthermore, DOE waived prior notice and an opportunity for the public to comment on this action. DOE cites the EPCA law as imposing a non-discretionary duty on DOE to waive Federal preemption at this time due to facts and circumstances which have occurred. According to DOE the states now have full jurisdiction to set whatever water efficiency standards for specific plumbing products as they see fit, provided they are more stringent than the current federal standards.

National harmonization of performance standards is preferred by manufacturers in the name of manufacturing efficiency, product availability performance and consumer safety. In the event that regulations are being considered for revision, PMI advocates that manufacturers be included in discussions about adopting more stringent efficiency standards to ensure maximum product performance and availability, as well as consumer satisfaction and safety. As an example, PMI cautions that care must be taken to match lower flow showerheads with proper valving to avoid scalding risks.

We hope that this summary information may be relevant to your examination. We welcome the opportunity to meet with your staff and to provide further detail and documentation. We look forward to your response on this important matter. In the meantime, if you have any questions, please do not hesitate to contact our PMI Washington staff, Diana Waterman at 202 898 1444 or dw@wafed.com

Sincerely,

Barbara C Higgens

Barbara Higgens
Executive Director

BH/abf

January 10, 2011

The Honorable Darrell Issa
Chair
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

RE: Sample of Impact of Regulations and Rule Interpretations on Metalworking Manufacturers

Dear Chairman Issa,

On behalf of the National Tooling and Machining Association (NTMA), the Precision Machined Products Association (PMPA), and the Precision Metalforming Association (PMA), please accept these comments in response to your request for examples of ill-conceived regulations and rules interpretations and their impact on metalworking manufacturers.

Our members are small and medium sized manufacturers, averaging less than 75 employees and typically family-owned, the majority of which are Subchapter S corporations. As you know, regulations impact small businesses much greater then on large corporations who have the resources to reduce the burden on their productivity. Many of the guidance opinions issued by federal agencies are overly broad, encompassing production activity not even a focus of the regulation. Increasingly, over the past two years, instead of issuing a new regulation to cover an activity, an agency will issue a new interpretation of an existing rule. The slightest "interpretation" change can halt the production of a manufacturer and cost the employer thousands of dollars a day.

Of particular concern is the increased lack of cooperation and partnership between businesses and agency personnel. For example, for years metalworking industries have maintained an excellent partnership through the OSHA Alliance Program where government, trade associations, and business owners come together to improve worker safety and health. However, in the past couple of years, OSHA has reduced the level of cooperation between government regulators and manufacturers, an alarming trend that reduces the Agency's effectiveness while injuring manufacturers' ability to compete.

Small and medium sized middle market manufacturers such as our members companies are often trapped between their much larger customers and suppliers and government regulators. Even if a regulation does not specifically target small businesses or the metalworking industry, these businesses and their employees still feel the trickledown effect. Broader government policies such as regulating large emitters of greenhouse gases exempts many small manufacturers from direct penalties and fines but if the cost of manufacturing in America increases for a key supplier or customer, then the cost also increases for small businesses. All actions have unintended consequences and we encourage federal policymakers to examine the impact their actions will have on all sectors of the economy even if targeting a specific industry.

Below are four examples of existing and new regulations and rules interpretations that directly negatively impact metalworking manufacturers, reduces our global competitiveness, and restrict our ability to hire employees and invest in our facilities.

OSHA Noise Compliance

The Occupational Safety and Health Administration (OSHA) is considering whether to change the way it officially interprets workplace noise exposure requirements and enforcements. The new OSHA policy would require employers to implement all "feasible" engineering and controls to protect employees from loud workplace noises instead of primarily using effective personal protective equipment like earplugs and earmuffs and noise-dampening equipment, enclosures, sound barriers, etc. already in place. According to OSHA's notice published October 19, 2010, employers must adopt these changes regardless of the costs unless an employer can prove that making such changes will "put them out of business" or severely threaten the company's "viability." Engineering controls are expected to cost over $10,000 per machine. Moreover, these controls have not been demonstrated to attenuate the noise to below the action level, and make setup adjustment and operations slower and less efficient. The cost of capital to install these controls is a significant hurdle, presuming it is available. Administrative controls would require shutting down or idling of up to half or more of operating equipment lowering return on investment and decreasing employment (If machines are idle, their operators are not needed. This is not a new regulation that simply lowers the threshold for employee noise exposure; it changes how OSHA interprets compliance and gives them the authority to dictate whether a company is capable of adding any new safeguards regardless of whether it will improve workplace safety.

Action: OSHA should not move forward with this rule as broadly written which is not anticipated to improve workplace safety but will result in increased production costs and fewer resources to invest in employees and the facility. OSHA is accepting public comments on this proposed interpretation by March 21, 2011.

EPA TRI Article Exemption Rule

The Environmental Protection Agency (EPA) and Office and Management and Budget (OMB) are in the final stages of considering a "clarification" of the Articles exemption pertaining to the Toxics Release Inventory (TRI) list. Should this clarification come into effect, virtually every manufacturer will be required to evaluate whether to file a TRI 313 Report, a process which will take significant investment in managerial, technical, and clerical training and assessment. The estimated cost of this new assessment and reporting requirement on Fabricated Metals and Machinery Manufacturing companies alone is $209 million and using 2.5 employee weeks for first time filers. We agree that the Article Exemption rule is broken, but the proposed clarification makes the situation for manufacturers more difficult. Currently, manufacturers who send solid scrap metals to a scrapyard must report these items as a "release" under TRI, despite the fact that this is the first step in the recycling process. Manufacturers face fines of $32,000 per day for paperwork violations, and for a small manufacturer, the stakes could not be higher for company trying to understand what constitutes an Article and why they must report recycling a product as a toxic release. Under community right to know regulations , manufacturers must report the amounts of these metallic constituents to local firefighters, and State and Federal environmental agencies, despite the fact that these ingredients are in solid form, noncombustible, and not 'released' in a fire or explosion, except as solids. A broad interpretation of a "release" by EPA inadvertently creates alarm in the surrounding community and jeopardizes the employers operations.

Action: EPA is better served by defining, for example, what is an actual release of a toxic substance, and exempting legitimately recycled materials such as scrap metal from TRI reporting. EPA should not move forward with this clarification.

EPA Metalworking Financial Responsibility Requirements Rule

On January 6, 2010, the Environmental Protection Agency (EPA) issued an advanced notice of proposed rulemaking that would require select industries to carry additional financial assurances (insurance) under environmental law if a company handles "hazardous substances". The EPA also announced businesses classified as Fabricated Metal Product Manufacturing (NAICS 332), Computer and Electronic Product Manufacturing (NAICS 334) and Electrical Equipment, Appliance, and Component Manufacturing (NAICS 335) as industries that the Agency would like to further examine in 2011 and also require to carry this additional insurance. The regulation would require facilities subject to the new requirements to establish and maintain evidence of financial responsibility for potential releases of hazardous substances (e.g., insurance policy, surety bond, trust fund, corporate guarantee). These requirements would negatively impact many facilities, because financial assurance mechanisms for potential Superfund liability can be very expensive and extremely difficult to obtain for most metalworking companies who pose little risk and already carry insurance.

Action: EPA should stop this proposed rule before implementation and better understand the manufacturing operations of the facilities it proposes to regulate. Expanding the requirement to metalworking companies will not improve workplace or environmental safety and health while reducing manufacturers' global competitiveness by increasing production costs.

OSHA Lockout Procedure Guidance

Without soliciting public comment, the Occupational Safety and Health Administration (OSHA) has taken an increasingly strict interpretation of lockout guidelines stating that all die setting requires lockout. In 2008, OSHA issued a compliance directive which specifically made clear that any effort to label die or tool changes as "routine, repetitive and integral to the production operation" and therefore not subject to lockout would be rejected. Even now, this is the case despite the changes not being "service or maintenance" related and even when alternative safeguarding is used and when there is no risk of accidental release of energy which could cause a hazard to employees. Many OSHA offices have historically not cited metal stamping companies when they have a specific lockout procedure using supplemental safeguarding means to assure there is no hazard from accidental energization or release of energy during die setting. However, without updated guidance and a realistic interpretation of the procedures we are seeing more and more citations and less cooperation even when control systems are already in place costing countless employee hours and thousands of dollars.

Action: OSHA must revert to cooperating with manufacturers as was practice for years under industry/government partner safety programs. OSHA should clarify the difference between processes that are routine, repetitive, and are integral to the production operation. Strict interpretation of rules that do not provide additional workplace safety and cost metalworking companies thousands of dollars in lost productivity unnecessarily reduces our manufacturers' global competitiveness.

Thank you for your leadership on this important issue and we look forward to continuing to work with you on behalf of small and medium sized businesses manufacturing in America.

Sincerely,

Dave Tilstone	Mike Duffin	William E. Gaskin
President	Executive Director	President
NTMA	PMPA	PMA

About NTMA:

NTMA is the national association representing the precision custom manufacturing industry, which employs more than 440,000 skilled workers in the United States. Its mission is to help members of the U.S. precision custom manufacturing industry achieve business success in a global economy through advocacy, advice, networking, information, programs and services. Many NTMA members are privately owned small businesses, yet the industry generates sales in excess of $40 billion a year. NTMA's nearly 1,300 member companies design and manufacture special tools, dies, jigs, fixtures, gages, special machines and precision-machined parts. Some firms specialize in experimental research and development work.

About PMPA:

The PMPA is an international trade association representing the interests of the precision machined products industry. While PMPA consists mainly of North America based manufacturers, its members also operate facilities in various industrial markets around the globe. The precision machined products industry consists of a diversified manufacturing base producing highly engineered components to customer specifications using a variety of materials such as: steel, stainless steel, aluminum, brass, and aerospace alloys. Utilizing the latest technology, including CNC turning and milling centers, rotary transfer machines, CNC and automatic screw machines, these companies produce complex parts and complete assemblies for finished goods such as: automobiles, aircraft, heavy truck, medical devices, appliances, construction equipment and much more. The industry is best described statistically under NAICS 332721.

About PMA:

PMA is the full-service trade association representing the $113-billion metalforming industry of North America—the industry that creates precision metal products using stamping, fabricating, spinning, slide forming and roll forming technologies, and other value-added processes. Its nearly 1,000 member companies also include suppliers of equipment, materials and services to the industry. PMA leads innovative member companies toward superior competitiveness and profitability through advocacy, networking, statistics, the PMA Educational Foundation, FABTECH and METALFORM tradeshows, and MetalForming magazine.

January 10, 2011

The Honorable Darrell Issa
Chairman
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

On behalf of RISE (Responsible Industry for a Sound Environment)® and our member companies, I greatly appreciate the opportunity to share our concerns about changes to existing and newly proposed U.S. EPA regulatory requirements that will negatively impact job growth and economic viability in the specialty fertilizer and pesticide industry. Our industry provides a wide range of products used by consumers and professionals on lawns, gardens, sports fields, golf courses, and to control pests of all types including mosquitoes, rodents and other public health threats.

Under our primary pesticide statute, The Federal Insecticide Fungicide and Rodenticide Act (FIFRA), our industry works collaboratively with U.S. EPA and the states to ensure products are rigorously regulated and available when consumers and professionals seek them. However, there are areas where EPA can provide greater transparency and certainty within that regulatory process. I wish to highlight three such areas where EPA needs to establish a much higher degree of regulatory certainty and rigor: Issuing Clean Water Act National Pollution Discharge Elimination System (NPDES) permits for certain pesticide applications; proposals calling for changes to pesticide brand names; and the Chesapeake Bay Total Maximum Daily Load requirements under the Clean Water Act.

NPDES Permit

Our industry is concerned with EPA's approach to regulating pesticides under its NPDES permit program, which Congress never intended to regulate pesticide applications. In fact, EPA had no concerns in this area, but must now comply with a court order that requires the agency and the states to create and implement an NPDES permit program and accompanying enforcement for applications of pesticides "to, over or near water" by April 9, 2010. RISE members and their applicator customers – most of whom are small businesses -- are directly impacted by EPA's draft NPDES permit and the new and duplicative regulatory compliance and reporting burden it imposes upon them outside of FIFRA.

For example, the majority of aquatic weed control treatments are performed by some 300 small businesses across the United States each with less than 15 employees. According to our analysis, the NPDES permit will require virtually every aquatic applicator company in the U.S. to submit a Notice of Intent triggering compliance with burdensome paperwork requirements. Such requirements mean the loss of one full-time employee providing service in the field to handle the additional paperwork and ensure compliance. The reassignment of staff to meet the paperwork requirements is estimated to cost these small businesses approximately $50,000 annually. Many applicators are struggling to survive as their municipal and community customers scale back on service, so reassigning one employee to comply with NPDES permit paperwork will effectively put many out of business or limit their ability to grow their business. Applications of pesticides "to, over or near water" are already well-regulated under FIFRA. Yet, EPA's proposed permit takes no account of existing regulatory activities.

Pesticide Brand Names

EPA issued its draft Pesticide Registration Notice (PR Notice) 2010-X entitled *False or Misleading Pesticide Product Brand Names* on May 19, 2010. This PR Notice threatens to undermine companies' investments in long-standing consumer products, creating a potential loss of approximately $2.5 billion in brand equity for our industry. The notice by EPA is not in reaction to public concern and is duplicative of regulatory activities already under the purvue of the Federal Trade Commission, Patent and Trademark Office, and State Attorneys General. EPA is beyond the boundaries of its regulatory authority by asserting long-standing pesticide products are misbranded, especially given that the agency is responsible for approving all product label language before a pesticide can be offered for sale.

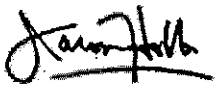
Additionally, EPA's proposal would modify regulations without formal rulemaking, thus violating the Administrative Procedures Act and explicit requirements for such activity under FIFRA. Further, there are numerous instances of EPA trying to implement this draft policy during routine product registration actions prior finalizing the guidance. It appears EPA is exerting its authority to influence consumer preference among pesticide products – an activity clearly outside of its regulatory remit and well beyond Congressional intent.

Chesapeake Bay TMDL

Finally, RISE is concerned with EPA's regulatory approach to managing nutrient and sediment runoff in the Chesapeake Bay watershed. Our members support efforts to restore the Chesapeake Bay and are active stewards of this national treasure. Our concern is with the lack of transparency and lack of appreciation of the value of turfgrass as a vegetative buffer to protect the bay. The creation and implementation of the TMDL has the potential to arbitrarily take away people's ability to maintain their home property values and surroundings through unnecessary restrictions on pesticide and fertilizer products. Data show restrictions on these products will not be meaningful to Bay restoration efforts. However restrictions will have a significant economic impact on the numerous lawn and landscape companies who provide services to homeowners and businesses in the region, golf courses that need products to maintain playing surfaces and homeowners whose property values will suffer loses as the quality of their lawns and landscapes deteriorate.

In summary, RISE would like to thank you and the committee for your efforts to identify and address regulations that negatively impact the economy and jobs. RISE members are committed to working with EPA to meet the requirements of FIFRA and provide pesticide and fertilizer products to meet the needs of our customers. Your efforts will help provide greater regulatory certainty and rigor allowing our members and customers to grow their businesses and add employees to their payrolls. We look forward to being a resource to you and the committee as you proceed with review of EPA regulatory activities.

Sincerely,



Aaron Hobbs
President
Responsible Industry for a Sound Environment

Cc: The Honorable Elijah Cummings, Ranking Member

Silver Nanotechnology Working Group
A Program of The Silver Research Consortium LLC

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Chairman Darrell Issa
House of Representatives
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

January 14, 2011

Dear Mr. Chairman,

I understand that the Committee on Oversight and Government Reform is examining proposed and existing regulations that negatively impact the economy and jobs. Recently, the White House Office of Management and Budget (OMB) under Executive Order 12866 reviewed a Nanopesticide Policy that was proposed by the Environmental Protection Agency, Office of Pesticide Programs (EPA OPP) in April 2010. The Silver Nanotechnology Working Group (SNWG) and the nanopesticide industry brought this proposed policy to the attention of the White House Office of Science and Technology Policy for the following reasons:

- The planned policy would require the presence of a nanomaterial in a registered pesticide to be reported under the 'unreasonable adverse effect' provision (FIFRA Section 6(a)(2) though EPA acknowledges that there is no nexus to risk.

- The new policy would unquestionably stigmatize the use of nanomaterials as commentators will equate nanomaterials with "adverse effect reports." Consumers may avoid all products because of the general belief that such products are not safe. Investors will not invest because the perception is that all nano-products are unsafe.

- By publishing this new policy, EPA would be endangering chemical innovation and progress. EPA has indicated that additional data requirements will be imposed on nanoscale pesticide products, but has not clarified the types of data that will be required or the regulatory path that EPA intends to take with respect to these materials. In essence the new policy constitutes an indefinite suspension of new pesticide uses of nanomaterials. This cloud of uncertainty is decreasing the incentive of potential commercialization, and creating a serious impediment to the

further development of innovative technology, particularly in green chemistry. Without the incentive of potential commercialization, industry leaders will be unwilling to continue or increase investment into research and development of sustainable pesticides.

- Nanomaterials are emerging as the cornerstone of sustainable pesticide development- where the "less" is "more" aspect of nanomaterials provides real benefits. The use of nanoscale pesticides allows more efficient and targeted application with lower quantities of ingredients and most importantly has the potential to replace more toxic materials currently in use.

- The proposed policies threaten U.S. small business and have already resulted in lost jobs. Companies such as Dune Sciences have put their antimicrobial business on hold and staff have been let go. With such dramatic loss of time to market, it is not clear that this remains an attractive opportunity. The very first manufacturer of a nanosilver product from 1954 expects that the new policy will put them out of business. This will snowball as more and more nanomaterial companies and investors become discouraged from the uncertainty and cloud of adverse perception surrounding nanopesticides and nanomaterials.

The Silver Nanotechnology Working Group was formed in January, 2009 in direct response to both the challenges that companies were facing in registering new products containing silver nanoparticles with the U.S. Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and also increased adverse press coverage of environmental and health effects of silver nanoparticles. The SNWG's main focus over the last 2 years has been to push EPA for a clear and reasonable regulatory path for nanoscale silver additives.

We are very grateful that OMB has had the opportunity to review this proposed EPA policy and we hope that your Committee can also take a look at this policy and help direct EPA OPP towards developing a timely and reasonable regulatory path not only for nanoscale silver pesticides but other nanopesticides.

Best Regards,

Rosalind Volpe

Rosalind Volpe, D.PH
Executive Director,
Silver Nanotechnology Working Group
rvolpe@caa.columbia.edu

SOCMA
Society of Chemical Manufacturers & Affiliates

January 10, 2011

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Chairman Issa:

The Society of Chemical Manufacturers and Affiliates (SOCMA) appreciates the opportunity to provide you, at your request, with existing and proposed regulations that have negatively impacted job growth in our industry. SOCMA is the U.S. trade association representing specialty, batch, and custom chemical manufacturers, which collectively employ over 100,000 workers in 2,000 sites and contribute $60 billion annually to our economy in products manufactured. Our membership includes many small manufacturers but also some multinational companies. U.S. batch producers are highly innovative and are at the cutting edge of new technology, providing products often made nowhere else in the world. The depth and expertise of this industry sector are vital components of the U.S. chemical industry and contribute significantly to U.S. global competitiveness.

SOCMA welcomes Congress' interest in examining existing and proposed regulations that negatively impact the economy and jobs. In fact, last year SOCMA called on policymakers and administration leaders to cease, for the remainder of the year, further consideration or advancement of legislation that would add to the regulatory burden facing small manufacturers. SOCMA's request was spurred, in part, by the high unemployment rate, the tendency in Washington to grow regulatory burdens, and evidence that smaller companies bear a disproportionate cost to comply with federal laws. According to 2005 research by the Small Business Administration (SBA), small companies face an annual regulatory cost of $7,647 per employee, which is 45 percent higher than the regulatory cost facing large firms. Compliance with environmental regulations, like those issued by the U.S. Environmental Protection Agency (EPA) under the Toxic Substances Control Act, costs 364 percent more for small companies.

Many of the job-impacting regulations our members face are implemented or have been proposed by the U.S. EPA, including two of the three regulations that we highlight below.