REGULATORY IMPEDIMENTS TO JOB CREATION

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

FEBRUARY 10, 2011

Serial No. 112–16

Printed for the use of the Committee on Oversight and Government Reform

Available via the World Wide Web: http://www.fdsys.gov
http://www.house.gov/reform

U.S. GOVERNMENT PRINTING OFFICE

67–568 PDF WASHINGTON : 2011

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REGULATORY IMPEDIMENTS TO JOB CREATION

THURSDAY, FEBRUARY 10, 2011

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 9:50 a.m., in room 2167, Rayburn House Office Building, Hon. Darrell E. Issa (chairman of the committee) presiding.

Present: Representatives Issa, Burton, Mica, Turner, McHenry, Jordan, Mack, Walberg, Lankford, Amash, Buerkle, Gosar, Labrador, Meehan, DesJarlais, Gowdy, Ross, Guinta, Farenthold, Kelly, Cummings, Towns, Maloney, Norton, Kucinich, Tierney, Clay, Lynch, Connolly, Quigley, Welch, Yarmuth, and Speier.

Staff present: Ali Ahmad, deputy press secretary; Kurt Bardella, deputy communications director and spokesman; Brien A. Beattie, Tyler Grimm, Ryan M. Hambleton, and Kristin L. Nelson, professional staff members; Michael R. Bebeau and Gwen D. Luzansky, assistant clerks; Robert Borden, general counsel; Molly Boyl, parliamentarian; Lawrence J. Brady, staff director; Joseph A. Brazauskas, Hudson T. Hollister, Sery E. Kim, and Jessica L. Laux, counsels; Sharon Casey, senior assistant clerk; Katelyn E. Christ, research analyst; Benjamin Stroud Cole, policy advisor and investigative analyst; Drew Colliatie and Kate Dunbar, staff assistants; John Cuaderes, deputy staff director; Adam P. Fromm, director of Member liaison and floor operations; Linda Good, chief clerk; Peter Haller, senior counsel; Frederick Hill, director of communications; Christopher Hixon, deputy chief counsel, oversight; Seamus Kraft, director of digital strategy and press secretary; Justin LoFranco and Cheyenne Steel, press assistants; Mark D. Marin, senior professional staff member; Kristina M. Moore, senior counsel; Laura L. Rush, deputy chief clerk; Krista Boyd and Brian Quinn, minority counsels; Carla Hultberg, minority chief clerk; Lucinda Lessley, minority policy director; Dave Rapallo, minority staff director; Suzanne Sachsman Grooms, minority chief counsel; Mark Stephenson, minority senior policy advisor/legislative director; Eddie Walker, minority technology director; and Alex Wolf, minority professional staff member.

Chairman ISSA. The committee will come to order.

I look forward to the hearing today and the witnesses fostering a vigorous discussion. This hearing is intended to be a listening session. We are not just saying we want to hear from you, we are going to quickly get to you as quickly as possible. I want to be very brief in my opening remarks.

This is the, as most people know, the week of the hundredth anniversary of Ronald Reagan's birth, so I think it is appropriate that we remind us that regulatory impediments to job creation are not a new phenomenon or a new challenge for America. To quote Ronald Reagan, "now, so there will be no misunderstanding, It is not my intention to do away with government; it is, rather, to make it work, work with us, not over us; to stand by our side, not ride on our back. Government can, and must, provide opportunity, not smother it; foster productivity, not stifle it."

There is nothing more important than putting today's hearing in the perspective that what was said more than 30 years ago by Ronald Reagan is true today, and we hope to find a way to have regulatory reform keep America safe, while at the same time giving Americans opportunities to get competitive jobs here and in export around the world.

With that, I yield to the ranking member for his opening comments.

Mr. CUMMINGS. Thank you very much, Mr. Chairman, and thank you for this hearing. In my district there are portions of the district where unemployment is probably somewhere around 20, 25 percent, so there is no one who is more concerned about the creation of jobs than I am. And, as you know, I fully support a comprehensive, and I emphasize comprehensive, review of regulations to make them effective and efficient.

Like every Memberm of Congress, we were elected to create jobs. No doubt about it. But we also swore an oath to protect the health and safety and welfare of the American people. In my opinion, an effective regulatory review should include several basic elements: it should examine both costs and benefits, develop conclusions based on solid data, facts, statistics, and seek input from a wide variety of sources.

I think President Obama took a good first step last month when he issued an executive order requiring agencies to examine the costs and benefits of regulations to the overall economy, to small businesses, and to American workers and families. Unfortunately, the approach adopted by the committee to date falls short of this standard, and I believe we need to take three key steps to be most effective and efficient.

First, we need to expand the scope of our inquiry to include the benefits of regulation, as well as the costs. We cannot do a legitimate cost-benefit analysis by collecting information about the costs alone. We also need to expand the groups we are seeking input from beyond those who want the repeal of regulations.

For example, no letters were sent to the Council of Institutional Investors, which supported financial protections in the Wall Street reform bill, or to the American Businesses for Clean Energy, which represents more than 60,000 small and large U.S. companies and believes reducing pollution is a "wise investment for long-term economic growth."

Second, we need to base our conclusions on facts instead of rhetoric. The country lost 8 million jobs during this recession primarily because the financial industry was inadequately regulated for decades, not because of over-regulation.

Third, we need to separate genuine reform proposals from self-serving advocacy. Many corporations that submitted responses to the committee had skyrocketing profits over the past 2 years. For example, ConocoPhillips profits increased from $4.4 billion to $11.4 billion; Boeing profits increased from $1.3 billion to $3.3 billion; American Express profits increased from $2.1 billion to $4 billion; Chevron's profits increased from $10½ billion to $19 billion. That is just over the last 2 years. Yet, a lot of the responses we received had nothing to do with creating jobs.

Companies proposed repealing the following, they wanted to repeal these, Mr. Chairman: requiring CEOs to disclose their compensation; they wanted to repeal this, give shareholders greater input on executive pay and golden parachutes; they wanted to repeal allowing the return of bonuses when corporate earnings are inflated.

And this is one that you are interested in, Mr. Chairman. They wanted to repeal this, encouraging whistleblowers to report abuses to the SEC. And they wanted to do something else. They wanted to repeal requiring all companies to disclose payments to foreign governments.

The bottom line is this: we all, and I emphasize that, we all support a balanced review of regulations. But this committee won't be effective if its work is incomplete, highlights only costs, ignores the benefits, and puts corporate interests above the health, safety, and welfare of the American people.

To conclude, Mr. Chairman, I ask that we focus not just on regulations, but on broad bipartisan initiatives to promote economic growth. On January 26th the president of the U.S. Chamber of Commerce, Thomas Donahue, and the AFL–CIO head, Richard Trumka, issued a rare joint statement. They applauded President Obama's proposal in the State of the Union to create jobs by investing in our Nation's infrastructure.

I ask unanimous consent to place into the record a letter I sent this morning requesting that our next hearing focus on this bipartisan proposal and asking that we invite the Chamber and the AFL–CIO and the Transportation Secretary LaHood to testify before this committee about creating jobs. By working together, we can help create jobs while protecting the health, safety, and welfare of all Americans.

And with that, Mr. Chairman, I yield back.

[The information referred to follows:]

February 10, 2011

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

Dear Mr. Chairman:

In his State of the Union address last month, President Obama proposed a new initiative to create jobs and strengthen the economy by investing in America's infrastructure. On January 26, the U.S. Chamber of Commerce and the AFL-CIO issued a rare joint statement applauding the President's proposal. They stated:

> Whether it is building roads, bridges, high-speed broadband, energy systems and schools, these projects not only create jobs and demand for businesses, they are an investment in building the modern infrastructure our country needs to compete in a global economy.[1]

For these reasons, I am writing to request that our Committee's next hearing focus on proposals to promote economic growth by investing in our nation's infrastructure. For this hearing, I propose that we invite three witnesses:

- Thomas J. Donohoe
  President and CEO
  U.S. Chamber of Commerce

- Richard Trumka
  President
  AFL-CIO

- The Honorable Ray LaHood
  Secretary
  U.S. Department of Transportation

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[1] *Donohue and Trumka Issue Joint Statement on SOTU,* U.S. Chamber of Commerce (Jan. 26, 2011) (online at www.uschamber.com/press/releases/2011/january/ donohue-and-trumka-issue-joint-statement-sotu).

In my opinion, these are exactly the kinds of bipartisan, constructive initiatives our Committee and Congress should support. Additionally, the Committee will be able to examine these issues within the context of the President's 2012 budget, due to be released Monday, February 14, 2011. This Committee is uniquely positioned to approach these challenges in a manner that will cultivate real solutions, and I look forward to doing so.

Sincerely,

Elijah E. Cummings
Ranking Member

Chairman ISSA. And I ask unanimous consent. Any objections?
[No response.]
Chairman ISSA. Then your statement will be placed in the record.
Mr. CUMMINGS. Thank you very much, Mr. Chairman.
[The prepared statement of Hon. Elijah E. Cummings follows:]

Opening Statement
Hearing on Regulatory Impediments to Job Creation

Rep. Elijah Cummings
Ranking Minority Member

February 10, 2011

Thank you, Mr. Chairman.

As you know, I fully support a comprehensive review of regulations to make them more effective and efficient. Like every Member of Congress, I was elected to create jobs. But I also swore an oath to protect the health and safety of the American people.

In my opinion, an effective regulatory review should include several basic elements. It should examine both costs and benefits, develop conclusions based on solid data, and seek input from a wide variety of sources.

I think President Obama took a good first step last month when he issued an executive order requiring agencies to examine the costs and benefits of regulations to the overall economy, to small businesses, and to American workers and families.

Unfortunately, the approach adopted by the Committee to date falls short of this standard, and I believe we need to take three key steps to be effective.

First, we need to expand the scope of our inquiry to include the benefits of regulation, as well as the costs. We cannot do a legitimate cost-benefit analysis by collecting information about the costs alone.

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For example, no letters were sent to the Council of Institutional Investors, which supported financial protections in the Wall Street Reform bill, or to American Businesses for Clean Energy, which represents more than 60,000 small and large U.S. companies that believe reducing pollution is a "wise investment for long-term economic growth."

Second, we need to base our conclusions on facts instead of rhetoric. The country lost eight million jobs during this recession primarily because the financial industry was inadequately regulated for decades, not because of over-regulation.

Third, we need to separate genuine reform proposals from self-serving advocacy. Many corporations that submitted responses to the Committee had skyrocketing profits over the past two years. For example:

- ConocoPhillips' profits increased from $4.4 billion to $11.4 billion;
- Boeing's profits increased from $1.3 billion to $3.3 billion;
- American Express' profits increased from $2.1 billion to $4 billion; and
- Chevron's profits increased from $10.5 billion to $19 billion.

Yet a lot of the responses we received had nothing to do with creating jobs. Companies proposed repealing provisions that:

- require CEOs to disclose their compensation;
- give shareholders greater input on executive pay and golden parachutes;
- allow the return of bonuses when corporate earnings are inflated;
- encourage whistleblowers to report abuses to the SEC; and
- require oil companies to disclose payments to foreign governments.

The bottom line is this. We all support a balanced review of regulations. But this Committee won't be effective if its work is incomplete, highlights only costs, ignores the benefits, and puts corporate interests above the health and safety of American families.

To conclude, Mr. Chairman, I ask that we focus not just on regulations, but on broad, bipartisan initiatives to promote economic growth.

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I ask unanimous consent to place into the record a letter I sent this morning requesting that our next hearing focus on this bipartisan proposal and asking that we invite the Chamber, the AFL-CIO, and Transportation Secretary LaHood to testify before the Committee.

By working together, we can help create jobs while protecting the health, safety, and welfare of American families.

Chairman ISSA. I thank the gentleman.

Members will have 7 days to submit opening statements, including extraneous material, for the record.

We will now recognize our first panel. Mr. Harry Alford is president and CEO of the National Black Chamber of Commerce, an association representing 95,000 black-owned businesses and dedicated to the economic empowerment of the African-American communities.

Mr. Michael Fredrich is president of MCM Composites, LLC, limited liability corporation, I trust, in your State, a not to large conglomerate, if you will, doing custom thermal set molding shop in Manitowoc, WI that employs 60 workers and has been in business for 30 years.

Mr. Jack Buschur is president of Buschur Electric, a full-service electrical contractor located in Minster, and I think that is Mr. Jordan's, Ohio that serves residential, commercial, industrial, institutional, and farm markets.

Mr. Jay Timmons is president and CEO of the National Association of Manufacturers, which represents manufacturers in every industrial sector in all 50 States.

And Ambassador Tom Nassif is president and CEO of the Western Growers Association, an agricultural trade association with 3,000 members who grow, pack, and ship 90 percent of the fresh vegetables and 70 percent of the fresh fruit in Arizona and California.

I thank the gentlemen and I ask that you all rise. As is the rule of this committee, all witnesses are required to be sworn in. Would you please raise your right hands?

[Witnesses sworn.]

Chairman ISSA. Let the record show they all answered in the affirmative. Please be seated.

I will eventually get to where I can do that by heart.

We want to allow time for all the Members here today to ask questions after they have listened to you, so I would ask that all witnesses try to limit, regardless of the length of their opening statement in writing, to 5 minutes. Your entire statement will be placed in the record when, as my predecessor, Mr. Towns, would say, in America we all know that green means go, yellow means caution, and red means stop. So please observe that.

Mr. Timmons.

STATEMENTS OF JAY TIMMONS, CEO, NATIONAL ASSOCIATION OF MANUFACTURERS; TOM NASSIF, PRESIDENT AND CEO, WESTERN GROWERS ASSOCIATION; HARRY ALFORD, CEO, BLACK CHAMBER OF COMMERCE; MICHAEL J. FREDRICH, PRESIDENT, MCM COMPOSITES, LLC; AND JACK BUSCHUR, BUSCHUR ELECTRIC

STATEMENT OF JAY TIMMONS

Mr. TIMMONS. Chairman Issa, Ranking Member Cummings, and members of the committee, the National Association of Manufacturers is the largest manufacturing trade association in the United States and we represent 11,000 companies, 90 percent of which are

small and medium sized enterprises, and we have 12 million Americans that we represent who are employed in manufacturing.

Manufacturing means jobs. This year, in January, manufacturing added 49,000 jobs, the most in a single month since August 1998. In 2010, the United States finished with a net gain of 136,00 manufacturing jobs. These are positive developments, indeed, but last year's employment gains still represented a return of just 6.2 percent of the 2.2 million manufacturing jobs that were lost during the past recession. And even for our member companies who are investing and expanding, regulatory uncertainty and costs discourage the addition of new employees.

We must always remember that manufacturers in the United States face fierce competition from countries around the world. Every million dollars or, what is more likely, billion dollars of new regulatory costs that the Federal Government imposes on a manufacturer in California or in Maryland has a negative impact on their competitiveness.

My written testimony goes into some detail, so please allow me to just highlight a few examples. For example, OSHA, last year, proposed a new plan to regulate workplace noise. Even if earplugs effectively protected employees from hearing loss, OSHA wanted companies to install new equipment and structures. In short, rather than spending thousands of dollars annually on hearing protection that actually worked, OSHA would have forced companies to spend millions of dollars to achieve the same results. One of our larger member companies estimated that their costs would have reached $1 billion nationally, a billion dollars that could be more productively used for research and development, capital investment, or jobs.

Now, thankfully, OSHA has withdrawn that particular plan in response to strong opposition from employers, but in another example, more than any other agency, the Environmental Protection Agency alarms manufacturers. Just 2 years after the EPA imposed extremely stringent limits on ground level ozone emissions, the agency proposed even more drastic rules. According to a recent study by the Manufacturers Alliance, making the current standard more stringent would cost 7.3 million jobs by 2020 and add $1 trillion in new regulatory burdens between 2020 and 2030. Many cities and counties in our Nation would instantaneously be in violation of the requirements of the Clean Air Act, choking off economic growth in countless communities nationwide.

Another example: the EPA has targeted critical equipment for manufacturers, the industrial boiler, for new emission limits that are harsh, inflexible, and potentially unattainable. According to a study by the Council of Industrial Boiler Owners, for every $1 billion spent on complying with these so-called Boiler MACT rules, 16,000 jobs would be put at risk and the U.S. gross domestic product could fall by $1.2 billion. Manufacturers of chemical, pulp, and paper products would be especially hit hard.

And finally, of course, there is the extraordinary proposal by the EPA to regulate greenhouse gas emissions. The EPA wants to ease into this new regime by limiting CO_{50} emissions from refineries and powerplants.

Mr. Chairman, some people believe that massively higher energy costs are a good thing, but manufacturers, who use a third of the electricity generated in this country, tend to believe otherwise. We understand that higher costs are passed on to consumers and higher costs makes the United States a less attractive place to do business. Jobs disappear; communities suffer. Our analysis of the Waxman-Markey cap-and-trade bill from the last Congress projected a half trillion dollar decline in GDP through 2030 and the loss of 2 million jobs.

Manufacturers welcome President Obama's recent Executive order calling for a review of agency regulations for their costs and effectiveness. We appreciate the administration's recognition of the impact of regulations on jobs, the economy, and small business. The next step must be to act on this recognition, to withdraw or modify burdensome regulations.

There is not one of us sitting here today who doesn't want to expand private sector employment to create good jobs for every worker who wants one. Any differences that we may have had is really in approach and in perspective. Today I give you the perspective of manufacturers, the men and women responsible for 12 million jobs in the United States, the employers who want to do more but who operate in the real world of unceasing global competition. For America and its manufacturers to succeed in this world, these regulatory burdens must be replaced by realism and their costs replaced by common sense.

I thank you very much, Mr. Chairman and members of the committee.

[The prepared statement of Mr. Timmons follows:]

COMMENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS
BEFORE THE

COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 10, 2011

Chairman Issa, Ranking Member Cummings and members of the Committee on Oversight & Government Reform, thank you for the opportunity to testify before you today about the impact of regulation on job creation and the economy.

My name is Jay Timmons, and I am president and CEO of the National Association of Manufacturers (NAM). The NAM is the nation's largest manufacturing trade association, representing manufacturers in every industrial sector and in all 50 states. Manufacturing has a presence in every single congressional district providing good, high-paying jobs. The United States is the world's largest manufacturing economy. It produces $1.6 trillion of value each year, or 11.2 percent of GDP, and employs nearly 12 million Americans working directly in manufacturing.

This is my first opportunity to testify before a congressional committee since I assumed my duties as president of the NAM in January. Manufacturing is deeply important to me personally as well as professionally. During the Great Depression, my grandfather stood in line for months to get a job at a local manufacturing plant in Chillicothe, Ohio. It was that job, and manufacturing jobs like it, that helped create and strengthen the middle class in this country and made it possible for my own family to succeed. In my current role, it is my honor and privilege to fight for the opportunity for

other families to hold good-paying manufacturing jobs like the one my grandfather was so determined to get decades ago.

On behalf of the NAM and the millions of men and women working in manufacturing in the United States, I wish to express my support for your efforts to bring greater oversight to the cumulative burden of regulation the economy now faces and to examine the specific costly proposals coming from this and previous administrations.

Manufacturing has been deeply affected by the most recent recession. This sector lost 2.2 million jobs since the recession began in December 2007. The United States finished the year with a net gain of 136,000 manufacturing jobs – a definitive positive, yet only 6.2 percent of the sector's total losses in the recession. To regain manufacturing momentum and encourage hiring, the United States needs not just improved economic conditions but also government policies more attuned to the realities of global competition. It is because of the significant challenges affecting manufacturing in the United States that the NAM developed a strategy to enhance our growth.

The NAM published its "Manufacturing Strategy for Jobs and a Competitive America" in June of last year. 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. To achieve those objectives, we need sound policies in taxation, energy, labor, trade, health care, education and, certainly, regulation.

Unfortunately, over the last two years, we have not seen sensible and cost-beneficial regulation being proposed by government agencies. On the contrary, an aggressive federal bureaucracy has imposed unworkable and excessive regulations with little regard for their impact on job creation and the economy. This hearing is critically

important to help change the dynamic among the regulators and to bring accountability to the Executive Branch.

The NAM welcomed the very clear, new direction on regulation announced by President Obama in his op-ed in *The Wall Street Journal*, through his Executive Order 13563 and his memorandum on small business regulatory flexibility.

With that new direction, a clean-up of sorts is necessary. Congress and the Administration should scrutinize the past two years of regulations and those currently under consideration to determine if they are consistent with a national mission of jobs and economic growth. We must note that some agencies are guilty of an agenda of overreach and insensitivity to costs and small businesses.

One particularly striking example of the overreach is the recent attempt by the Occupational Safety and Health Administration (OSHA) to reinterpret the definition of "feasible administrative or engineering controls" with regard to noise standards. Manufacturing facilities can be noisy places with the shaping and machining of metal, welding, cutting and other processes. The safety of our workers is a critical responsibility of manufacturers, both as a moral duty but also to preserve the effectiveness of those workers. It is in our best interests to take care of our employees, and that includes protecting their hearing.

Since 1983, OSHA has had an enforcement policy that accepted employers' use of personal protective equipment, such as ear plugs and other ear protection along with a hearing conservation program, when it is less costly than administrative or engineering controls. This reasonable approach means manufacturers did not have to redesign facilities, buy costly new systems or get rid of expensive machines if workers could be protected with personal protective equipment. OSHA set a standard and expected employers to use the most cost-effective approach. This is not radical and, in fact, is

exactly the kind of common-sense approach embodied in the President's new Executive Order 13563.

The new Executive Order suggests that benefits must justify costs, that regulations should be tailored to impose the least burden on society, that the regulatory option chosen should create the most net benefits, and that performance objectives should guide the rules rather than a particular method of compliance. In October, OSHA proposed to do the exact opposite of those principles by reinterpreting the word "feasible" with regard to this standard from cost-beneficial to achievable "if they will not threaten the employer's ability to remain in business." So instead of this being a discussion of whether regulations affect job creation, OSHA demands that a company demonstrate it would go out of business if it had to use more costly methods. There is no indication that the more costly methods would better protect workers, just that the agency feels it has the authority to impose them.

This is an example of bureaucratic inflexibility and excess on the part of OSHA, directly contrasting the principles the President has outlined to be sensitive to the impact of regulations on jobs, the economy and especially small businesses. We have been gathering data from our members on the potential costs of this reinterpretation of the word "feasible", and our preliminary findings are that the range of costs imposed on businesses is from hundreds of thousands of dollars for the smallest of companies, millions of dollars for many medium-sized operations, to one company's estimate of a one billion dollar compliance cost. Now, these costs might not put every one of those companies out of business, but the new demands would divert scarce capital while providing no new benefit to our workers. How could any government agency think this made sense? How could any government agency not appreciate the fragility of the economic recovery and what this would do to job creation?

Thankfully, OSHA withdrew this proposal on January 19 of this year, just one day after publication of the President's new Executive Order. OSHA has decided to suspend work on this proposal while it investigates other options to achieve its objectives, but it has not pledged to eliminate this option from future consideration. Congressional oversight is still crucial to make sure this bad idea does not re-emerge.

In the same press release announcing the withdrawal, OSHA reminds small businesses of its on-site consultation program that offers free and confidential advice to help make workplaces safer. What the release fails to mention is that OSHA is in the process of proposing amendments to that program that would remove the "wall of separation" between the consultation program and the enforcement staff. OSHA's actions here will only serve to discourage small businesses from participating in this successful program by making it more likely that a confidential consultation will turn into a surprise enforcement referral for something that does not present an imminent danger. OSHA is headed in the wrong direction with yet another proposal and needs Congress and other stakeholders to help right the ship.

The Environment Protection Agency (EPA) is also a significant contributor to costly and unnecessary burdens placed on the economy. The burden of environmental regulation falls disproportionately on manufacturers and is heaviest on small manufacturers because the compliance costs are not affected by economies of scale. Even our smallest members require one or two staff dedicated full-time to regulatory compliance, especially for environmental regulations. Often, manufacturers feel compelled to hire additional expensive consultants to help stay abreast of all the new and changing requirements. But this is just one part of the challenge facing manufacturers.

The EPA has been embarked on a decades-long process to implement the Clean Air Act and its amendments. There is no doubt that enormous benefits have been

brought to our nation from efforts to improve air quality. But the continued ratcheting down of emission limits produces diminishing returns at far higher marginal costs. This means that each new air rule will have a greater impact on job creation than those in the past.

Costs of pollution abatement are capital intensive. In a time of economic recovery where capital is extremely scarce, every dollar diverted from productive use creates additional pressure to reduce labor costs. And when commodities and other manufacturing inputs are increasing in costs, even more pressure builds to squeeze labor costs. In this environment, it is very clear that unnecessary or cost-ineffective regulation will dampen economic growth and will continue to hold down job creation. For some firms it will be the final marginal straw that destroys the whole business.

That is why it is so shocking that the EPA decided to take a Bush Administration rule that was enormously costly, the National Ambient Air Quality Standard (NAAQS) for Ozone, and propose making it even more stringent and costly. One study by the Manufacturers Allliance/MAPI estimated the most stringent proposal 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. We have a short reprieve from this rule because the EPA has delayed its final proposal until July. But Congress must work with the EPA to stop the agency from making a $1 trillion mistake.

If the traditional challenges with air quality regulations were not enough to discourage manufacturers from hiring new employees or investing in new equipment, then the decision to regulate carbon dioxide (CO_2) as a pollutant under the Clean Air Act certainly will. This is unlike any regulation manufacturers have ever experienced. In the past, technology has helped to develop cheaper methods to "scrub" pollutants from our smokestacks. But CO_2 cannot be scrubbed from emissions; it can only be reduced through reductions in output or fuel switching. The easiest way to reduce CO_2 from

stationary sources is to reduce economic output. That is a recipe for job losses. And although these regulations start with the largest facilities, the stage has been set to regulate even the smallest manufacturers. The possibility creates an overhang of uncertainty that casts a dark shadow on the future of manufacturing in this country. Congress must act quickly to eliminate this threat and reclaim its authority to determine how CO_2 will be regulated and stop the EPA from abusing the intent of the Clean Air Act for this purpose.

The cumulative burden of these new and costly regulations is nearing a tipping point. The 112th Congress has the ability to recognize the dangerous course we are on and to change it before it is too late for our economy and the American worker. This Committee enjoys a unique jurisdictional mandate to look over the entirety of the federal government and its regulatory programs. Only through a wide focus can the true scope of the impacts on manufacturing and job creation be seen clearly. We welcome your commitment to this effort. And we welcome the President's expressed commitment to be sensitive toward the impact of future regulations. But looking forward is not enough. For the sake of economic vitality, an emphasis on reasonable regulation must also examine recently contemplated, proposed and finalized rules.

Allow me to reiterate manufacturers' concerns with several additional regulatory programs that have not been sufficiently rethought or that are still headed in a troubling direction.

EPA Boiler MACT

The 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 more than $20 billion in

compliance costs and place hundreds of thousands of jobs in jeopardy. Furthermore, as the NAM has communicated to the EPA, 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. The court recently rejected this extension and the final rule is expected to be published by February 21, 2011. Unless Congress intervenes, we are likely to see a rule that neither the Administration nor industry wants finalized or implemented.

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 could inadvertently harm economic growth. In particular, it is crucial that new regulations on derivatives include a strong and workable exemption for those end-users, like manufacturers, that use derivatives to hedge commercial risk. 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.

SEC Special Disclosures Section 1502 (Conflict Minerals)

The Manufacturers support the underlying goal of Sec. 1502 to address the atrocities occurring in the Democratic Republic of Congo (DRC) and adjoining countries and are working with other stakeholders to help resolve the problem. We encourage the SEC to implement Sec. 1502 in a manner consistent with the realities of global supply chains and that acknowledges the facts on the ground in the DRC as well as the limited control downstream users have on the refiners/smelters and mines. A successful outcome is one that achieves the goals of the statute without unduly burdening legitimate trade. The NAM acknowledges the challenges involved with achieving this outcome and encourages the SEC to work with all affected industries to understand how the requirements can be realistically implemented across supply chains. The wrong path on this rulemaking could end up costing industries more than $11 billion to comply.

OSHA Injury and Illness Protection Program

OSHA is 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 a major impact on all aspects of both workplace safety enforcement and the promulgation of new regulations. We are concerned that this new proposal 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 achieved measurable successes. Based on preliminary information from OSHA, 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 these conditions were 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 pose 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, in the process creating serious inconsistencies between international and U.S. aviation regulations. The proposed rule applies to 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 $1 billion 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 that adhere to alternate standards and lost business to foreign companies 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 affected industries more than $2 billion. 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 reports from consumers and public safety entities. Significant debate took place in Congress on the appropriate types of reporters to include in the database. The final CPSC rule, however, recognized 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. The rule redefined the terms "consumer" to include trial attorneys and public safety entities to include "consumer advocacy organizations." As a result, the database could 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.

Existing Rules

The President has also promised a "look back" at existing rules to find those that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." We welcome an effort to streamline existing regulations and attempt to eliminate some of the accumulated burdens placed on manufacturing. But we fear that without proper oversight from Congress, this effort will be much like its predecessors – ineffective. Presidents since Jimmy Carter have required agencies to review their rules periodically, developed task forces to conduct the efforts, required plans from agencies and called for public nominations of rules for reform. But if the proper incentives do not exist or agencies are not held to account, then no measurable progress will be made. Since this Committee also oversees the federal workforce, perhaps it can consider having appropriate incentives included in federal employee performance appraisals to make these reviews effective. Additionally, future hearings on agency plans and their progress could help to make sure this effort produces results.

Manufacturers hope this is the dawn of a new regulatory era built on common sense with an understanding of the forces of global competition, the cumulative burden of existing rules and the needs of small business. We stand ready to assist in your efforts to help make the necessary improvements to our government.

Mr. Chairman, thank you for the opportunity to testify today, and I will be happy to respond to any questions.

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Chairman ISSA. I thank the gentleman.

Before I introduce or ask Mr. Nassif to speak, I think full disclosure is in order. Ambassador Nassif is a deacon in my church. He was the Ambassador to Morocco and he is in fact a personal friend, so I hope that won't diminish the 70 percent of fresh fruits and vegetables that he represents and the thousands of growers.

Ambassador.

STATEMENT OF TOM NASSIF

Mr. NASSIF. I hope that introduction didn't set me up for failure.

Chairman ISSA. You can turn the mic on after you finish ripping me back, please, Ambassador. [Laughter.]

Mr. NASSIF. Good morning, Mr. Chairman, Ranking Member Cummings, and members of the committee. Thank you for the opportunity to appear before you today. In fact, our members produce about one-half of all the fresh produce that is grown annually in the United States.

Today, American agricultural production represents a $300 billion market, but we find ourselves in a regulatory environment that is stifling job creation and economic opportunity. Regulations are promulgated without benefit of the best available science and experience. Significant stakeholder engagement is lacking.

As a result, current requirements are often inflexible and impractical. These include the Clean Water Act requirements of redundant pesticide permits, water quality standards which cannot be met, clean air restrictions on particulate matter like dust, Endangered Species Act requirements, and actions taken by the National Labor Relations Board and the Department of Labor, which has introduced uncertainty into our business models, constraining our ability to invest in our businesses, our communities, and to increasing the size of our work force.

And when one out of every nine foreign capital dollars invested goes toward meeting regulatory requirements, which in some cases cannot be met, the picture of the regulatory burden becomes clear. This morning I would like to highlight just two examples. The first involves implementation of the Endangered Species Act.

California water needs are largely met by State and Federal pumps operating in the San Sacramento-San Joaquin Delta. Litigation under the Endangered Species Act alleged that pumps harmed federally protected fish species, including salmon and a 1-inch fish known as the Delta Smelt. In 2008, the Fish and Wildlife Service, the National Marine Fisheries Service, were compelled to develop new biological opinions governing the pumps.

As a result, water delivered to farms and cities were severely restricted during one of California's most severe droughts. The results were devastating. In 2009, only 10 percent of the Federal water allocations were delivered. Nearly 500,000 acres of farmland were fallowed. Economic harm is estimated between $340 and $370 million. The number of jobs lost runs into the thousands and several San Joaquin Valley farm communities suffered unemployment of 40 percent.

Water users turned to the Federal Court. In May 2010, the court repeatedly criticized the National Marine Fisheries Service's salmon biological opinion as unsupported by reasonable explanation,

simply indefensible, inexplicable, and not rational nor scientifically justified. In a separate ruling on the Delta Smelt biological opinion, the court held that the Fish and Wildlife Service did not comply with the National Environmental Policy Act, which required the Service to consider the impact of its regulations on the human environment, and that the specific restrictions on pumping operations were not adequately justified by generally recognized scientific principles.

Agencies implementing the ESA must consider the impact of their decisions not only on species, but also upon the economy, employment, and communities. We ask this committee and others to increase their oversight of ESA implementation and to focus especially on the quality of the scientific data used to justify regulatory decisions and the degree to which the agencies meaningfully engage those economically impacted.

Next I would like to raise concerns about the H–2A guest worker program. This program represents the only avenue for legally employing foreign agricultural workers in the United States. The process is unnecessarily complicated and labor intensive. Approvals are often issued late, notwithstanding statutory deadlines. The delay is compounded by Department of Labor's continuous demands for wording modifications, which often inconsistently apply or misapply the regulations. Compounded by visa processing delays, by DHS, and visa appointment delays by the U.S. consulates, lengthy delays in the arrival of guest workers are commonplace and costly. Even brief delays can be disastrous to producers of perishable agricultural commodities.

We are especially concerned about the tremendous increase in minor technical violations, people work violations being imposed by the Department of Labor. The program is so complicated many well-intended employers unintentionally commit technical violations. Nevertheless, the Department of Labor imposes maximum penalties without regard to the seriousness of the infraction, the size of the employer, or the employer's good faith and mitigation efforts. Such penalties, some approaching $500,000, are beyond most farmers' ability to pay and could force them out of business.

While employers who violate the law should be punished, the punishment should be reasonable and proportionate. The fines imposed by the Department of Labor are unnecessarily punitive and have the effect of discouraging farmers from using the program. In fact, today H–2A makes up only 2 to 4 percent of the agricultural work force. We ask this committee to examine the Department of Labor's administration of this program and its effect on the agricultural industry, culminating in a departmental report to this committee identifying the H–2A program problems and solutions.

We acknowledge the need and value of regulations. We merely ask that they be fair, reasonable, and in accordance with the facts and sound science.

Thank you very much.

[The prepared statement of Mr. Nassif follows:]

U.S. House of Representatives

Testimony Before the Committee on Oversight and Government Reform

Hearing on Regulatory Impediments to Job Creation

Tom Nassif

President and CEO of Western Growers

Thursday, February 10, 2011

9:30am

Good Morning. Chairman Issa, Ranking Member Cummings and members of the committee, thank you for the opportunity to appear before you today. I am Tom Nassif, President and CEO of the Western Growers Association which is an agricultural trade association headquartered in Irvine, California. Western Growers members are small, medium and large-sized businesses who produce, pack and ship almost 90 percent of fresh fruits, nuts and vegetables grown in California and approximately 75 percent of the fresh fruits, nuts and vegetables grown in Arizona. In total, our members account for nearly half of the annual fresh produce grown in the United States, providing American consumers with healthy, nutritious food.

Studies demonstrate that every California agricultural job supports two jobs, and for every dollar our farmers and processors add to the agriculture sector, they are adding an additional $1.27 to the U.S. economy.

Nationwide, agriculture produces nearly $300 billion in value. Agriculture is the backbone of our economy, maintaining a safe and secure domestic food supply is not only a matter of national security but also of economic recovery. We are critical to job creation and community support.

We are also members of the very communities in which we grow, pack, and sell our products. Many of us are multi-generational, family farmers. We have a vested interest in sustaining the environment because we rely on the land and other natural resources to continue producing a safe and healthy crop. We have a responsibility to treat our employees with dignity and fairness, first because it's the right thing to do, and second, because without a reliable workforce, our products will rot in the field—our livelihoods and the livelihoods of our communities would disappear.

This morning, I will highlight some of the regulatory pressures that are making it increasingly difficult for us to continue to do our jobs—to do business in the United States. Let me be clear from the outset, we believe that compliance with laws and regulations is an important component of our social and environmental stewardship.

Yet, as you'll hear in my testimony, today we are experiencing a regulatory climate which is expensive. According to a recent CRS report, an estimated $1 of every $9 of California farm capital investment goes toward regulatory compliance. Furthermore, these are dollars which are not being used to create additional jobs and economic activity. Beyond cost there are cases where regulatory requirements and restrictions are technically impossible to meet.

I would like to focus on two examples that are indicative of regulations that impact agriculture but which are advanced without valuable applied scientific knowledge, use of real world data, transparency and input from agricultural stakeholders. The result has been impractical controls, solutions and timelines that have severely impacted farmers.

Interpretation of the Endangered Species Act (ESA)

Situation

Current activity under the ESA threatens jobs supported by production agriculture. One of the more striking examples is the manner in which the ESA has been implemented in the Sacramento-San Joaquin Delta.

California's water needs are largely met through the complex storage and conveyance systems of the federal Central Valley Project (CVP) and California's State Water Project (SWP). The two systems rely on two large water pumping facilities at the southern end of the Sacramento-San Joaquin Delta, where millions of acre feet of water move annually into the projects' twin aqueducts that convey water to cities and farms to the south.

Following litigation by environmental groups under the ESA alleging that the projects' operations harm the protected Delta smelt, federal agencies released a new biological opinion in late 2008 to govern operation of the pumps and protect the species.

The biological opinion (BiOp) developed by the U.S. Fish and Wildlife Service (FWS) relative to the protected Delta smelt was followed by another BiOp issued by the National Marine Fisheries Service (NMFS) relative to protected salmonids. Both BiOps were implemented under ESA-required "reasonable and prudent alternatives" (RPAs) developed by the agencies that severely restricted the operation of the pumps and greatly reduced the amount of water delivered to users in the south. The implementation of these ESA-driven restrictions coincided with one of the most severe droughts California has experienced in decades.

As a result, in 2009, only 10 percent of contractual allocations were delivered to CVP contractors, an all-time low. While the drought contributed to this reduction, water contracting agencies estimate that without the BiOp restrictions, the CVP allocation would have been three times higher (30 percent of contracted water). Water users successfully challenged the BiOps in federal court.

In May 2010, a federal judge issued an order barring NMFS from implementing two actions that restrict water exports from the CVP and SWP pumping plants in the south Delta. The court repeatedly criticized the federal agency's biological opinion and actions included in the reasonable and prudent alternative, characterizing portions of those documents as "unsupported by reasonable explanation," "simply indefensible," "inexplicable," and "not rational nor scientifically justified."

The judge also issued an order declaring unlawful several portions of the biological opinion and reasonable and prudent alternative prepared by the FWS to protect delta smelt. The Court held that under the National Environmental Policy Act, or NEPA, the federal government should have considered impacts on the human environment when implementing the pumping restrictions and that the specific restrictions imposed by the federal government were not "adequately justified by generally recognized scientific

principles." A temporary plan will govern short-term Delta water operations while the agencies develop new BiOps.

Separately, in 2009, at the request of water users, members of Congress and the Administration, the National Academy of Sciences launched an independent study of the RPAs to determine whether they are scientifically valid and whether there are less economically damaging strategies for species protection. In March, 2010, the NAS panel issued a report that called into question the agencies' implementation of the BiOp RPAs, which had resulted in maximum water delivery reductions in most cases. While the panel found that restricting flows to the pumps is inherently "scientifically valid," in that *any* reduction of pumping operations certainly protects delta smelt and salmon smolts, it also stated:

"However, there is substantial uncertainty regarding the amount of flow that should trigger a reduction in exports. In other words, the specific choice of the negative flow threshold for initiating the RPA is less clearly supported by scientific analyses."

To the farmers and cities whose water is contractually delivered by the state and federal projects, this was confirmation that the federal fish agencies almost always selected the *most restrictive* response available rather than exercising the discretion available to them under the RPAs to mitigate water cutbacks.

Impact

The 2010 federal court decisions provide water users some hope for relief, as does the NAS report and, potentially, a second NAS report due later this year that will assess the impacts on protected fish species of the many other stressors, such as urban wastewater discharges, invasive and predatory non-native species, unscreened in-Delta water diversions, pesticide and other pollutant loading and other factors. Nonetheless, the damage caused by the implementation of the ESA in prior years cannot be undone. It includes, in 2009 alone, nearly 500,000 acres of farmland fallowed due to supply cutbacks and between $340 million and $370 million in economic harm. Estimated job losses vary widely, but there is no disagreement that the number of lost jobs runs in the thousands in this already-economically stressed region. Several San Joaquin Valley farm communities suffered unemployment of 40 percent or higher.

Solution

The solution is not to compel regulated communities to turn to the courts in costly and divisive litigation. Instead, as the court held in this matter, the agencies responsible for implementing the ESA should also comply with NEPA, which will require not only protecting endangered species but also considering and mitigating the human and economic impact of their regulatory decisions.

Accordingly, we are seeking an amendment to the ESA that would strengthen transparency through improved interagency coordination and consultation with potentially impacted stakeholders early in the process of developing RPAs.

An amendment to the ESA could provide a way forward that protects threatened and endangered species while minimizing economic impacts to humans and ultimately restoring the credibility of the ESA and the agencies charged with its implementation.

In addition, we ask the Committee to investigate how the Departments and agencies with the authority and responsibility to implement the ESA have modified their agency culture in light of recent, relevant court decisions and in this case, the findings of the National Academy, to avoid repeating the same flawed procedures.

H-2A Regulations

Situation

In the absence of immigration reform, the H-2A or temporary agricultural guest-worker visa program is specialty crop agriculture's only option to acquire with certainty the legal labor force necessary to harvest America's fruits and vegetables. Studies demonstrate that domestically-born workers are unwilling to work in America's specialty crop fields.

The regulations governing the H-2A program have been dramatically altered three times in the last three years. The program suffers crucial flaws including inconsistent interpretations of the Department of Labor (DOL) regulations by DOL employees and an institutional hostility towards agricultural labor programs. As a result agricultural employers are punished for using the only option we have to hire a legal workforce. Moreover, DOL's actions are actually undermining the objectives of the Department of Homeland Security.

Impact

While the examples of administrative challenges are numerous, the three egregious examples below highlight problems that should be easily resolved.

- DOL's Chicago Processing Center (CPC) is unresponsive to user concerns and questions, and delays in processing proper H-2A applications are common. It is impossible to contact a live person at the CPC to inquire about a pending H-2A application and Employment and Training Administration staff have refused our requests to allocate a staff person to answer phone calls from H-2A users. While there is an e-mail address devoted to this purpose, questions often go unanswered.

  In addition, we have members who have submitted clean applications but received no response from the CPC for several months and only just before the employer's date of need for workers to harvest the crop. Only after repeated inquiry from our Association and various Members of Congress intervening did the CPC respond. Moreover, it is common for CPC's attorneys to reverse its adverse interpretation after an employer appeals the determination, rendering the appeal moot. However,

by the time the application is approved, the employer does not get the workers until several weeks after the date of need, resulting in adverse financial impact.

- The current regulations require filing of the application, recruitment, and securing of housing 60-75 days before date of need. However, it is difficult to predict labor needs and project the availability of recruited domestic workers so far in advance of the date of need. While DOL has ample time to certify an H-2A application (i.e., to make a determination that U.S. workers will not be adversely impacted by bringing in H-2A foreign workers and that the H-2A employer intends to comply with the program's requirements), the Department is still routinely delaying certifications and is slow to respond to questions and concerns.

- Agricultural employers that use the H-2A program often utilize multiple job classifications – some are H-2A while others are not H-2A. Fulltime, year round workers are not eligible for the H-2A program, since H-2A applications are granted only for temporary or seasonal work. The DOL has determined that any work performed by non-H-2A employees that is also performed by H-2A employees is to be considered "corresponding employment." As such, the non-H-2A employees are entitled to all benefits provided to H-2A employees including payment of the elevated wage rates of the H-2A program, free housing and in-bound and out-bound transportation. For example, if an employer has a crew of cabbage harvest workers who are H-2A visa holders, no other person on the farm can perform any cabbage harvesting work, even if the worker is a foreman providing instruction on harvesting, or the harvesting work being performed is incidental to the employee's primary occupation. If an employee is not primarily performing cabbage harvesting work, incidental cabbage harvesting work should not propel the employee into the H-2A job classification. This overbroad definition of "corresponding employment" creates further uncertainty, difficulty in planning, and financial loss.

- The DOL's Wage & Hour Division (WHD) is currently assessing H-2A employers hundreds of thousands of dollars in fines and backpay for technical compliance violations of the H-2A program. For example, WHD recently audited an H-2A employer and found they unwittingly failed to report the involuntary and voluntary separation of domestic workers to the CPC and/or state workforce agency. WHD assessed a fine of $1,000.00 per worker; plus $1,000 per worker for failure to pay the three-fourths guarantee (even though it is undisputed these workers were properly terminated or voluntarily quit); plus the three-fourths guarantee for hours not worked and wages not earned. Based on 56 domestic workers, the total fines and backpay levied was over $475,000.00. Another H-2A employer who otherwise did everything correctly did not understand that the number of hours *offered* (not just worked) during the pay period is now required by regulation to appear on an employee's paystub.

- For this technical violation, the employer was assessed fines of nearly $500,000.00. In neither case were workers, domestic or foreign, found to be

> mistreated, or otherwise denied the wages, benefits or conditions set forth in the regulations. Unfortunately, the H-2A rules are so complicated, it's virtually impossible for an employer not to commit some technical violation, which could lead to financial ruin.

The financial harm caused by DOL's delays, and inconsistent interpretations, and overly punitive enforcement strategy has resulted in confusion, frustration, and pecuniary loss by employers struggling to use the program.

Oversight of DOL's management of the H-2A visa program is vital to ensuring the program runs as smoothly as possible. There is no other recourse for the specialty crop industry to address its need for labor. Yet, our substantive comments to inform the rulemaking process were disregarded by DOL.

At public meetings held by DOL officials to "explain" the current iteration of the rules and Agency resulting interpretations of the regulation, it was clear that DOL is instructing its employees to focus not on making the regulations operational but rather to focus on enforcement of unworkable regulations. As a result there is extreme concern among the H-2A user community about the DOL's systemic hostility towards and abuses against H-2A employers. Even longtime users have begun to abandon the H-2A program because of the risk that minor technical violations discovered during a DOL audit will result in fines and penalties that may lead to financial devastation.

Solution

Precious DOL staff resources are increasingly being devoted to audits and exacting of fines rather than seeking meaningful solutions to improve the dysfunctional visa program. We respectfully request this Committee use its oversight authority to examine DOL's administration of this visa program culminating in a report authored by DOL to this Committee explaining its decisions and rationale concerning issues such as: staff allocation, interpretations of the H-2A regulations, delays and inconsistency in its certification process, and assessments of fines and penalties for technical violations that are financially ruinous for family farmers.

Let me be clear, even if the DOL were to magically correct all issues related to the H-2A program tomorrow, it would not solve agriculture's labor crisis. We still need immigration reform legislation tailored for agriculture to deal with our existing experienced workforce, who are not currently eligible for the H-2A program. Moreover, the infrastructure is not in place for most agricultural employers to access the H-2A program, which is why H-2A users make up only 2-4% of the agricultural labor workforce. However, for those employers who choose or are compelled to use the H-2A program now, immediately correcting the systemic problems with H-2A is critical. Without improvements to this program and the manner in which it is implemented by DOL, United States agricultural and specialty crop production in particular will continue to suffer unnecessary financial loss due to product being left to rot in the field because

our farmers lack the labor they need and requested to get their food to consumers in America and around the world.

Conclusion

On behalf of American specialty crop agriculture we are appreciative of this Committee's willingness to examine the myriad of regulations American producers are forced to navigate in an attempt to continue to cultivate this great land of ours. The impact of the costs, job losses and competitive disadvantage for U.S. Specialty Crop production created by this regulatory environment is perhaps best brought home as follows:

I have members who have moved portions of their operations out of the United States, not because the cost of getting product to market is less in other countries, but because regulatory uncertainty is mitigated and there are local populations able and willing to work harvesting specialty crops.

Specialty crop producers in the United States today are subject to a variety of social responsibility audits, which include labor, conservation, environmental and food safety requirements. They are not moving production from the United States to avoid responsible business practices. They face these in other countries too, particularly if they want to sell to the United States. They are leaving because many regulations are not about common sense responsibility, but about compliance with an agency's' interpretation of the law regardless of the real world impact, available science and options for workable compliance.

Western Growers appreciates the Committee's willingness to listen to our concerns and looks forward to working with you to do something about them.

Chairman ISSA. I thank the gentleman.
Mr. Alford.

STATEMENT OF HARRY ALFORD

Mr. ALFORD. Thank you, Mr. Chairman, Ranking Member Cummings. You have my written testimony. I am going to give examples, also, of some problems.

BP is the outlier of the oil industry. The oil moratorium in the Gulf hurts the entire U.S. oil industry. But BP is the only violator of these OSHA, EPA, and Mineral and Mines Management violations. If you take all of the violations, the fines, the penalties of the U.S. oil industry combined, it would be a fraction of what BP does in violations. Deaths, injuries, fines by the many millions of dollars are attributed to BP.

As a result of the oil moratorium, 20,000 oil jobs are gone; 150,000 related jobs with small businesses and supply chain oil industry are gone. BP is the outlier, not the U.S. oil industry. We need to remove this oil embargo. We can put an embargo on BP; they are the ones who are doing it.

Second, net neutrality. The Internet has been robust and has been successful. It is probably the greatest invention since the telephone. But now the FCC wants to regulate it. It wants to put its claws into the Internet and seize the billions of dollars that the telecoms invest in the Internet and to spread its borders and increase more jobs. The FCC will stop the Internet in its tracks from any further growth if this net neutrality is implemented.

The gainful employment rule by the Department of Education, which wants to take away financial aid from for-profit colleges and schools. Forty percent of the students of these for-profit schools are minorities. How can small businesses have an educated work force if they eliminate 40 percent of the jobs of the educations, degrees that would go to these future employees? The gainful employment rule is there simply because for-profit schools are non-union, and they want to strike a blow against non-union schools, but also hurt the students.

Four, project labor agreements. These are union-only construction jobs. President Bush put a ban on project labor agreements because unions discriminate, discriminated in a Jim Crow fashion. President Obama has reinstated project labor agreements. So when you put a project labor agreement on a project, you are saying whites only; no Hispanics, no blacks, no females. The Department of Labor has these statistics, but they won't release them to the public, and I ask this committee to subpoena the Bureau of Labor Statistics, the racial demographics of construction unions. You get beyond general labor and cement, and you will see Jim Crow discrimination. The Congressional Black Caucus should be very interested in this.

But when you get to electrical workers, carpenters, roofers, iron workers, it is dismal. So if you have a project labor agreement, you are saying no blacks and Hispanics allowed. The Washington baseball stadium is a beautiful example of that, if you study that. But if you get those statistics from the Bureau of Labor Statistics, it will show.

Department of Defense. Major contractors play a game and the Department of Defense is in cahoots with it. One, a floor corporation has a contract, a log cap 4 contract, which is for Iraq, Afghanistan; multi-billion dollar contract. Haliburton had it before them. They will list and negotiate with black and Hispanic contractors to work on these projects. They will do the scope of work, list it there, and then the SBA will look at that report and say this is fine. Disabled veterans, minority businesses, women businesses, fine. The only problem is when floor gets the contract, they will never, never utilize those people. It's a game and the SBA has no juice to make them. So we have all this false hope going on.

Lockheed is another example. Then I will end. Lockheed had one of my members who did the scope of work, did all the agreements, went and got the contract. They actually moved their offices and changed their phone numbers from them. He couldn't even find them afterwards. He complained to the Department of Defense, complained to the SBA; they did nothing.

So if you could go back and just get that floor and examine that and do an audit on that, I would appreciate it. Thank you, sir.

[The prepared statement of Mr. Alford follows:]

Testimony of
Harry C. Alford

On Behalf of the
National Black Chamber of Commerce (NBCC)

Before the House Committee on Oversight and Government Reform

Thursday, February 10, 2011

The National Black Chamber of Commerce
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I would like to thank Chairman Issa and all the distinguished members of the committee for the opportunity to speak before you. On behalf of the National Black Chamber of Commerce and the 100,000 Black owned businesses that our organization represents, I thank you for your hard work and continued leadership. The topic of today's hearing, "Regulatory Impediments to Job Creation" is a matter of great importance and I applaud this committee for starting much needed dialogue on such an issue.

As we all know the administration, congress and the media have been debating how to get our economy back on track and spark sustainable job growth. As the economy begins to show signs of life we also recognize the fragile nature of our situation and understand that excessive constraints by the government can undermine the business sector and the entrepreneurial spirit of America.

One of the most egregious burdens that I want to first mention is the Gulf moratorium imposed by the federal government as a result of the BP oil spill. With this moratorium the government has indicated that all U.S. energy companies will be lumped together and penalized for the actions of one company. As you know under this policy America's energy companies will not have the opportunity to buy new offshore drilling leases in the Gulf for the foreseeable future.

I have visited Louisiana and have talked with those who have been devastated by the spill; make no mistake I understand the environmental and economic damage caused by this tragic incident and I fully appreciate why the moratorium was initially put in place. Yet in the months following we have learned that this accident was caused by one bad actor in an otherwise responsible industry.

As we know too well, BP's safety record has been stained for many years and it's the responsibility of our government to appropriately address BP's long history of negligence. I have included with this testimony a graphic which clearly demonstrates the extent of BP's irresponsibility and lengthy record of safety violations. I think we can all acknowledge however that the government's actions should not punish those that follow the law, implement industry best practices and have demonstrated sterling safety records.

According to a study last year by Joseph R. Mason, PhD, the six-month offshore drilling moratorium cost the country $5 billion in economic activity and 19,500 jobs.[1] The moratorium adds insult to injury and will prolong the economic damage seen in the Gulf. Now is the time to dust ourselves off and get back to work. We must learn from this incident and not be afraid to move forward with domestic energy production.

The longer we stall energy development, the longer the Gulf States will have to wait to create high paying jobs and benefit from new investment. The reality is we need jobs now. A moratorium will not help the American people or the American economy get moving again; rather, this policy decision will give foreign countries and foreign businesses a competitive advantage and prevent the advancements that will make our industries stronger.

Another area of overzealous regulation can be seen in the continued pursuit by the Environmental Protection Agency to impose greenhouse gas mandates. The EPA has gone

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[1]Dr. Joseph R. Mason, "Critique of the Inter-Agency Economic Report Estimating the Economic Effects of the Deepwater Drilling Moratorium on the Gulf Coast Economy", accessed at: http://www.saveusenergyjobs.com/wp-content/uploads/2010/09/Dr.-Mason-Critique-of-Administrations-Report.pdf

beyond the intended scope of their authority and implemented far reaching policies by invoking the Clean Air Act (CAA) to defend their actions. This unprecedented expansion of power at the EPA is sending the wrong signals to the business community. According to the Senate report "EPA's Anti-Industrial Policy: Threatening Jobs and America's Manufacturing Base" nearly 800,000 jobs are at risk due to EPA greenhouse gas proposals.[2]

Overreach by the agency has already created a maze of red tape for businesses both large and small. And it looks as if this regulation will not stop anytime soon; EPA Administrator Lisa Jackson recently reaffirmed that the administration continues to oppose any congressional plans that would curb the scope of the agency's greenhouse gas regulations.

The current state of EPA rulemaking will increase the financial burden on businesses and as we all know, limited resources translates into fewer jobs and higher prices for consumers. The impact will be especially hard on the energy sector and will disproportionately affect communities of color as African-American and Hispanic households spend a greater percentage of their income on energy. For many families in these communities higher energy prices creates some difficult choices between keeping the lights on and other expenses such as healthcare, food and housing.

Furthermore minority small businesses facing higher electricity and transportation costs are also feeling the pinch. This added financial strain can often result in small businesses cutting salaries, benefits and even jobs. It appears now is the time for Congress to lead and seriously consider a rollback of EPA's onerous regulations.

Reducing emissions to mitigate the effects of climate change is a very real challenge for the U.S. and the global community. There is no question we need to take proactive steps that will reduce our carbon footprint and make our environment cleaner. And yes we do need some reasonable regulations and a watchful eye from our government but the current onslaught of heavy business regulations is unsustainable, especially at a time when Washington looks to get our businesses back on track.

We must look to energy efficient technologies and cost-effective approaches to GHG reductions. Tapping into wind energy, clean burning energy sources such as natural gas and investing in cutting edge biofuels will play an important role to the long-term reductions in emissions. These are just a few technologies that our businesses communities are working on. It is these ideas that will allow our economy to prosper while also protecting our air and environment.

Throughout my career I have had the good fortune to work for several Fortune 100 companies. During this time I witnessed how the heavy hand of regulation can suppress business expansion and job growth. We must consider the financial impact of regulations on small and minority-owned businesses and we must transform America into a haven for free enterprise. Today I feel as though we are consistently squandering potential opportunities because of smothering regulations. According to the U.S. Department of Labor 13.9 million Americans are unemployed

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[2] U.S. Senate Environment and Public Works Report "EPA's Anti-Industrial Policy: Threatening Jobs and America's Manufacturing Base", September 28, 2010, accessed at: http://epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=3ede3e93-813f-4449-97e6-0d6eb54fbc9e

and for African Americans the unemployment rate stands at 16.5 percent.[3] I believe our business leaders are spending too much time, energy and resources dealing with regulatory burdens that restrict their business's ability to look forward and grow.

As I stated early, I thank the committee for starting this dialogue, I truly believe this discussion is vital to the decision making process of our leaders here in Washington and to the development of smart policies that will benefit all our American workers. I thank the members for their time and look forward to answering any of their questions.

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[3] U.S. Bureau of Labor Statistics (BLS), "Employment status of the civilian population by race, sex, and age", January 2011, accessed at: http://www.bls.gov/news.release/empsit.t02.htm

Chairman ISSA. I thank the gentleman.
Mr. Fredrich.

STATEMENT OF MICHAEL J. FREDRICH

Mr. FREDRICH. Can you hear me?
Chairman ISSA. Yes, we hear you. All these mics have one thing in common, and that is in order to not pick up background noise, you have to get close; and that is how they were designed. So please give us a little indulgence.
Mr. FREDRICH. OK. Our company was started in 1983. I bought it in 2001. We actually closed 1 month after 9/11. When I bought it, I took all the cash I had, which was $600,000, and I borrowed $5 million. I personally guaranteed it and I collateralized that with my home. So I crossed the financial rubicon. There is no going back for me; this is either going to work or not work. If it doesn't work, I start over at the age of 59.
From a macro point of view, most of our customers, and our customers include big industrial companies like Rockwell, Eaton, Boeing, DRS, which is a defense contractor. All of these companies have global sourcing departments and their mission is to buy components at the cheapest price they can. And most of these large companies don't make these components, they buy them. Boeing, for example, they don't make their engines. They build the aircraft, but all the components that go in there somebody else makes, and it is small companies like ours that make those components.
So what happens when we become not competitive? I will give you a good example: Kohler Engines. We used to sell 1.2 million head covers to Kohler Engines for their engines, 1.2 million. We did that for years and we sold them for $1.43, and today we make none. They still use them, but those are all sourced in Mexico for $1.18, which doesn't sound like much, you know, a few pennies, but that is the kind of margin that companies like ours work on. There isn't a big margin, and the whole point behind that is regulation. If you believe the numbers are not—you know, the SBA says it is $1½ trillion, The Heritage Foundation says $1 trillion cost of regulation. Somebody has to pay for that. Somebody. And that trickles down or trickles up from whomever we use for services, whomever we buy raw material from.
So the point on a macro basis is that burden is there, and we can't compete. We are competing, but it is difficult to compete if we increase that burden. We ought to focus on lowering it.
I have 2 minutes. I want to make three points on three different areas.
Healthcare. The 1099s. There is a requirement in the healthcare, and this is a common topic. We sent out this year, we just did it, 11 1099s. We have 375 vendors. It took us 3 hours to send out 11 1099s, and if you extrapolate that to 375, it is 2 weeks worth of work. That is about a $2,500 cost for us just to send out 1099s, which produces no value in our company. And it may not seem like a lot to you, but $2,500 is meaningful to me, and it is meaningful to everybody that works at our place. That is one issue.
The Medicare part of the healthcare plan has a 3 percent tax on individuals that make over $200,000. I wish somebody in Washington would please educate Members of Congress that small busi-

nesses are organized as subchapter S corporations, LLCs, or LLPs. They all pay taxes at the personal level. So when you raise taxes on the so-called rich, you are raising taxes on small companies that are organized in that manner. So this 3.8 percent that is in there is a direct tax on our company if it comes to be.

The employee mandate. We have 60 employees and we are hiring more. I think we will be at 70 by the end of the year. If this goes through, this mandate goes through, we will have 49 employees and we will not have more, because we are not going to be subject to this law. We are just not going to do it.

OK, I am not getting through all my goodies here.

EPA, we talked about the EPA, that is an issue. But the OSHA thing I want to comment on. For some reason this I2P2 thing, there is an implication that companies do not properly provide a safe work environment. We have a great incentive to do that. I don't know if you have ever heard of worker's compensation insurance, but we are required to carry it; it costs more for us than our healthcare. So we have a strong incentive to have a safe and productive workplace.

Sorry for going over here.

[The prepared statement of Mr. Fredrich follows:]

"Regulatory Impediments to Job Creation"

Testimony of

Michael J. Fredrich
President
MCM Composites, LLC
Manitowoc, Wisconsin

February 10, 2011

Before the

Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Darrell Issa, Chairman
The Honorable Elijah Cummings, Ranking Member

Chairman Issa and Ranking Member Cummings, thank you for inviting me to testify today. My name is Michael Fredrich, President of MCM Composites, LLC (MCM) located in Manitowoc, Wisconsin. MCM Composites is a privately held company with 60 non-union employees. We are located on the Lake Michigan shoreline 50 miles north of Milwaukee. MCM is a custom thermoset molder of parts ranging from handles for high-end cookware to emergency oxygen system containers for the Boeing 787 (the Boeing 787 is the first composite commercial aircraft). A thermoset composite is a type of plastic which has physical properties which are required in applications that require resistance to heat, exposure to hydrocarbons, electrical conductivity, and compressive force.

Economic Gravity

Gravitational force is omnipresent. It goes virtually unnoticed but over time it will compress your spine. Government regulations act on the economy much the same as gravitational force acts on an object -- it burdens our economic system and eventually will compress our economy.

Estimates of the cost of federal regulations range from $ 1 trillion (Heritage Foundation) to $1.75 trillion (Small Business Administration) per year. This represents around 7% of our annual GDP. Burdensome regulations are a stealth tax on every person in this country. The cost of regulation incurred by all businesses is eventually passed on to the consumer and our workforce. Regulatory costs require business owners like me to devote more time and resources to government compliance, which means less capital devoted to investment and job creation.

Macro View

Our country has experienced a steady erosion of manufacturing jobs. Our import of products greatly exceeds our exports. For our country to reverse this trend we must be able to compete globally and this can only be accomplished through productivity and low burden costs. We cannot compete on labor costs. The average hourly wage in China is $1.36 (BLS 2008) and in India it is $0.91 (BLS 2005).

The total cost of production labor (hourly wage plus health care, payroll

taxes, unemployment compensation, etc) in China, India, East Asia, and Mexico is only a fraction of the cost in the US. What costs $30 per hour to produce in the US costs $15 per hour in East Asia and $5.00 in Mexico. The only way we can compete -- **and we can compete** -- in the world economy is through higher productivity coupled with lower overhead burden. The current burden includes the compliance costs of federal regulations, and with the threat of additional burden the U.S. is moving entirely in the wrong direction.

A $1 trillion annual regulatory burden is taking its toll on U.S. competitiveness – on my ability to compete. Fifty federal agencies and 150,000 pages of rules is enough.

Front Line View (of our free market system)

Our company competes in the world economy. We ship product to Germany, Canada, China, Mexico, Dominican Republic, and Puerto Rico. We can compete with manufactures in these countries and within our own country because we provide value --which is not always the lowest price. Our value flows from engineering expertise, investment in capital equipment and a productive workforce -- all coupled with the lowest overhead burden we can achieve. Therein is the issue: anything that increases our burden (costly federal regulations) diminishes our ability to compete by increasing our costs.

The trend is not good. There is an attempt to govern through federal agency regulations initiatives which would never pass Congress.

Currently being considered are regulations that will add to the to the already high regulatory burden placed on private sector businesses, to wit;

Patient Protection and Affordable Care Act

- *1099 requirement and paperwork burden.* Our company deals with approximately 375 different vendors. This year we issued 11 1099 forms. It took 3 hours to assemble the information and type the forms. It would take 2 weeks to prepare 1099's for all of our vendors. This requirement, which had no place whatsoever in the health care bill, will add $2,400 (80 hrs @ $30 per hour) to our regulatory burden.

My business will also be required to report employee health care premiums to the government, and eventually prove that it provides government-approved insurance (if we decide, or can continue to afford insurance).

- *Employer Mandates and Regulations Impeding Choice and Affordability.* We offer a high deductable HSA health care plan to our employees. It is a good plan because it introduces market incentives to a system that has been corrupted by a 3rd party payment system. It encourages preventative care by paying 100% (no deductable) for such things as physicals, mammograms, and colonoscopies. The total monthly premium is $1,050 of which we pay 70% and our employees pay 30%. The thought of an unelected bureaucrat deciding the type of insurance we provide is abhorrent. Undoubtedly our plan will not meet with bureaucratic approval and we will be forced to change, if we can afford to, or drop coverage and pay the fine. We are between Scylla and Charybdis. Either choice will raise our regulatory burden.

- *Medicare Payroll Tax.* Starting in 2013, individuals with incomes over $200,000 will see their Medicare payroll taxes increase. Most privately owned businesses are structured as Sub-S or LLC corporations. The income of the business is passed to the ownership in the form of a schedule "C" or K-1 and the tax is paid at the individual level. This is a tax increase on small business. It raises our regulatory burden and takes away more of my capital that can be used for investment, pay increases or new jobs.

Injury and Illness Preventative Program--OSHA

This is nothing more than a "prove yourself innocent" plan and it is a waste of time and money. The free market is providing all the necessary incentives. All businesses are required to carry worker's compensation insurance which covers work related injuries. The cost of this insurance is a function of the number and severity of the claims. Our monthly premium for this insurance is $4,500. We can get a rebate of up to 40% if we do not have a claim so we have a strong incentive to provide a safe workplace environment which morally we would do regardless of the monetary incentive.

Our company has a safety committee comprised of people working in

every area of our facility. They meet monthly and inspect the plant for potential safety issues. All findings are fixed immediately. We also have a monthly cash incentive payment of up to $15 per person if we are injury free.

We have a system and it works. It is efficient. We do not need more burdensome regulation to mirror what we are already doing. Engaging my employees in additional government-required activities rather than focusing on their jobs will decrease productivity, and make us less able to compete and win business. Jobs will be lost or not created at MCM Composites, LLC.

EPA Regulation

This agency needs to be regulated. All existing regulations must be reviewed and all pending regulations must be stopped. The potential damage is pervasive so I will focus on one element -- the effect of proposed regulations on the cost of electricity.

The majority of our nation's electricity output is fueled by fossil fuel -- coal, oil and natural gas. Unless we move toward terrestrial energy (nuclear power) it will remain so. We can cover every square mile of this country with wind mills and solar panels and it would not meet our energy needs so forget about it. The problem with wind and solar is lack of energy density and no EPA regulation will change that physical reality.

Our company is a large consumer of electricity. Behind labor (12% of our cost structure) and raw material (40%) electricity represents around 7% of our total operating costs. Our monthly bill averages $22,000.

Most of the electricity we use is generated by a coal-fired power plant. Enhanced EPA regulations increasing the cost of producing electricity using coal will be passed on directly to our company and added to our regulatory burden and make it more difficult for us to compete in the world market. Rising energy costs mean fewer jobs added at MCM Composites, LLC.

Summary

The cost of regulation is cumulative and pervasive. The cost of every product and service we buy includes some regulatory burden. We in turn include this cost in the selling price of our product which must cover our production cost, interest on our debt, and provide a profit. And yes, I can proudly state that our goal is to make the highest profit the free market will allow. If regulatory burden continues to grow we, along with all other private sector companies, will no longer be able to compete in the world market. Jobs will not be created and new businesses will not be formed. You will suffocate the system that has produced everything we enjoy today. It is that simple.

Thank you. I look forward to your questions.

Chairman ISSA. I thank the gentleman. I realize that much of this will be covered in Q&A afterwards.

Mr. Buschur.

STATEMENT OF JACK BUSCHUR

Mr. BUSCHUR. Good morning, Chairman Issa and members of the committee. I would like to thank you for giving me the opportunity today to speak with you regarding the impact that the regulations have had on small businesses. I am the owner of Buschur Electric. We are a small electrical contracting business in Minster, OH. Currently we have 18 employees. We are down from 30 employees in 2009. My business works on commercial, industrial, institutional, and residential properties.

There are three specific regulatory issues I want to bring to the committee's attention today: the EPA lead RRP rule, project labor agreements, and prevailing wage rules. All three of these regulatory burdens have had a negative impact on small businesses and our ability to create new jobs.

In 2008, the EPA finalized a rule requiring firms to be certified and their employees trained on lead-safe practices during home renovations on homes built before 1978. The EPA eventually revoked its flexible opt-out rule and required all home renovations in pre-1978 homes to follow lead-safe practices, thus increasing the cost of renovations for homeowners even those with no at-risk individuals. Such inflexible standards have the effect of driving down demand for renovation services or worse; homeowners could seek to have renovations performed by unlicensed underground contractors, which increase the safety risk to everyone.

I first found out about this burdensome rule on a recent project of ours. An inspector from OSHA informed the project's general contractor that all subs were required to have on-the-job training in order to be in compliance with the RRP rule. I had to have two of my employees go through a 7-hour certified training course onsite.

In addition, the general contractor had to arrange expensive training and testing, including a respirator clearance exam, a lead assessment by a certified professional, which cost the general contractor $1,260 a day for 3 days. The overall cost to the general contractor was approximately $10,000. We eventually learned that we in fact did not need to be certified or trained to do the work because the concentration of lead dust at the work site was not high to pose a risk to anyone.

As I witnessed the amount of time and money the general contractor exhausted in effort to be compliant, I decided that my business would not become an RRP compliant company. The expenses are outrageous, the amount of paperwork is far too burdensome and the exposure liability is too great for my business to take on.

I am also very concerned about two labor regulations that also adversely impact small business: project labor agreements [PLAs], and prevailing wage. The Federal Government's insistence on PLAs makes it much more difficult for a business like mine to bid on projects. Typical PLAs are pre-hire contracts that require projects be awarded only to contractors and subcontractors that agree to certain pro-union rules. The use of project labor agreements is a

discriminatory tactic that prevents non-union construction companies from working on government construction projects. When you consider the fact that the construction industry currently has an unemployment rate of over 20 percent, it makes no sense to impose PLAs or other regulations that serve as impediments to job creation.

We have not personally been directly affected by PLAs over the past couple of years, as the projects have either been too large or too far out of our area. However, I am very concerned that if a right-size project with a PLA does come up for bid in our area, we will be unable to compete for the work, making it even harder for our company to get back on its economic feet.

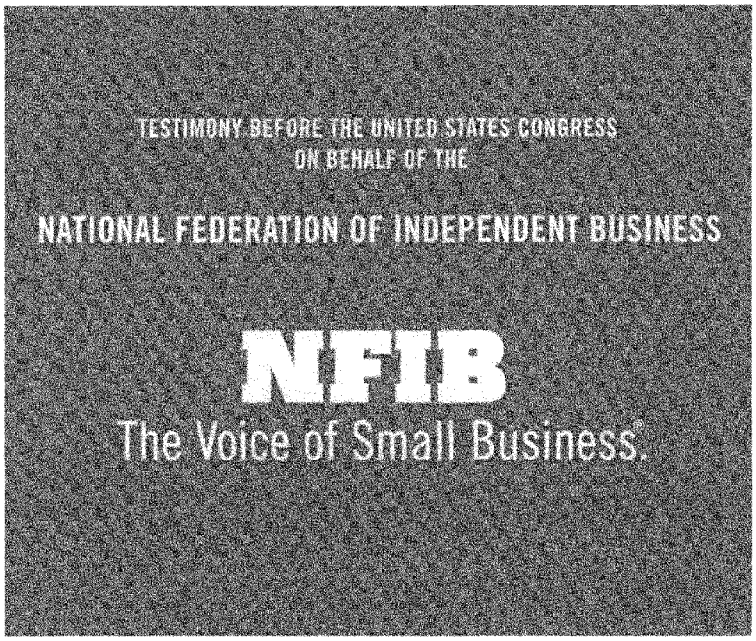
Another area that has adverse impact on small business job creation is the prevailing wage rules. With a slow economy, the last couple of years we have been forced to perform prevailing wage work in order to survive. These projects—unfortunately, we have seven of them going on right now—create a lot of additional record-keeping.

At the time a prevailing wage project is awarded, my firm has to issue employee notification forms to employees on the job advising the wage rate and applicable fringe benefits paid per hour. Then every week we have to perform time-intensive reporting requirements such as certifying payroll reports for each prevailing wage job and for the payment of fringe benefits to certified retirement plans.

And typically all this work has to be duplicated because at the end of the project we will be harassed by unions requesting an audit on our company, that we did not follow the rules, so we just have to double all the time spent and effort on these paperwork requirements and then go through the hearing process. We have been involved in two of those and have come out clean, but it is still extremely expensive and it is a very large inconvenience.

I would like to thank the committee for the opportunity to share my concerns with you and I urge the committee to take a hard look at how the regulatory environment can stifle small business job creation and growth. Thank you.

[The prepared statement of Mr. Buschur follows:]



Testimony of Jack Buschur, Buschur Electric

The House Committee on Oversight and Government Reform

Regulatory Impediments to Job Creation

February 10, 2011

Good morning Chairman Issa, and members of the Committee. I would like to thank you for giving me the opportunity to speak with you today regarding the impact that regulations have had on small businesses.

I am the owner of Buschur Electric, a small electric contracting business in Minster, Ohio. We currently have 18 employees, down from 30 employees in 2009. My business works on commercial, industrial, institutional and residential properties.

There are three specific regulatory issues I want to bring to the committee's attention today – the EPA Lead RRP rule, Project Labor Agreements, and prevailing wage rules. All three of these regulatory burdens have had a negative impact on small businesses and our ability to create new jobs.

In 2008, EPA finalized a rule requiring firms to be certified, and their employees trained, on lead safe practices during home renovations on homes built before 1978. Originally, the rule allowed homeowners to opt out of these requirements if they signed a waiver confirming that there were no pregnant women or children six and under living in the home. In the weeks leading up to the rule's effective date, in April 2010, many NFIB members contacted the organization expressing alarm that they had just heard about the rule or its requirements. Members said that they had difficulty getting their employees into EPA-compliant training classes, and some reported having to pay excessive costs to enroll in compliance classes before the deadline due to the heavy demand.

EPA eventually revoked its opt-out rule, requiring all home renovations in pre-1978 homes to follow lead-safe practices, thus increasing the cost of renovations for homeowners that had no at-risk individuals. Such inflexible standards have the effect of driving down demand for renovation services. Or worse, homeowners could seek to have renovations performed by unlicensed, underground contractors, which increases the safety risk to everyone.

I have found this situation to be a prime example of a regulation that hinders my ability as a small business owner to add jobs and help get our economy growing again. I first found out about this burdensome rule at a recent project. An inspector from the Occupational Safety and Health Administration informed the project's general contractor that all subcontractors were required to have "on the job training" in order to be in compliance with the RRP Rule. I had to have two of my employees go through a seven hour certified training course on site. In addition, the general contractor had to make arrangements such as Lead Air Sample Analysis, OSHA Lead Awareness training, Pre Assumed Lead Exposure Blood Panel, Post Assumed Lead Exposure Blood Panel, Respirator Clearance Exam, Respirator Fit Exam, Medical Exam for each employee, the purchase of the necessary PPE gear and Lead Assessment by a certified professional (the lead assessment alone was $1,260.00 per day for 3 days). The overall cost for the general was about $10,000. We eventually learned that we in fact did not need to be certified

or trained to do the work because the concentration of lead dust at the worksite was not high enough to pose a risk to anyone.

As I witnessed the amount of time and money the general contractor exhausted in an effort to be compliant, I decided that my business would not become an RRP-compliant company. I expect many other similar companies will not either. The expenses are outrageous, the amount of paperwork is far too burdensome, and the exposure to liability is too great for my business to take on.

I believe that the RRP rule is a perfect example of a regulation that will limit competitive bidding on projects and increases the cost of projects to property owners and taxpayers.

I am also very concerned about two labor regulations that also adversely impact small business – Project Labor Agreements (PLAs) and prevailing wage. The federal government's insistence on PLAs makes it much more difficult for a business like mine to bid on projects. Typical PLAs are pre-hire contracts that require projects be awarded only to contractors and subcontractors that agree to:

- Recognize unions as the representatives of their employees on that job
- Use the union hiring hall to obtain workers
- Obtain apprentices exclusively from union apprenticeship programs
- Pay into union benefit plans
- Obey costly, restrictive and inefficient work rules

The use of Project Labor Agreements is a discriminatory tactic that prevents non-union construction companies from working on government construction projects. The U.S. Department of Labor's Bureau of Labor Statistics found in their annual report on union membership that from 2009 to 2010 union membership fell from 14.5 percent to 13.1 percent of the U.S. private construction work force. By preventing 86.9 percent of construction companies from bidding, PLAs increase the cost of construction by unfairly reducing the number of companies which can competitively bid. When you consider the fact that the construction industry currently has an unemployment rate of over 20 percent, it makes no sense to impose PLAs or other regulations that serve as impediments to job creation.

We have not been directly affected by PLAs over the last couple years, as the projects have been either too large or too far out of our area. However, I am very concerned that if a right-sized project with a PLA does come up for bid in our area, we will be unable to compete for the work., making it even harder for our company to get back on its economic feet.

Another area that has an adverse impact on small business job creation is the prevailing wage rules. With the slow economy the last couple of years, we have been forced to perform prevailing wage work in order to survive. These projects (we currently have 7 prevailing wage projects) create a lot of additional record keeping that must be sent to the prevailing wage coordinator, along with additional copies to the Division of Industrial Compliance and Labor, for when the unions file an audit request after the job is complete.

At the time a prevailing wage project is awarded, my firm has to issue employee notification forms to employees on the job, advising the wage rate and applicable fringe benefits paid per hour. Then, every week we have to do the following:

- Review prevailing wage updates and prepare updated employee notification forms to all employees working on the job.
- Print and review certified payroll reports for each prevailing wage job.
- Compile applicable spreadsheet, per project, for payment of training fringe benefits to certified training program.
- Compile applicable spreadsheet, per project, for payment of fringe benefits to certified retirement plan.
- Compile applicable spreadsheet for tracking of all prevailing wage hours worked per job, and all prevailing wage fringe benefits due per job, all to prepare for the possibility of a prevailing wage audit.

Then, every month, we must:

- Submit certified payroll reports to the prevailing wage coordinator for each project.
- Submit payment of training account fringe benefits to certified training program
- Submit payment of fringe benefits to certified retirement plan.

I thank you for the opportunity to share my concerns with you, and I urge the committee to take a hard look at how the regulatory environment can stifle small business job creation and growth.

Chairman ISSA. I thank the gentleman.

I now recognize myself for 5 minutes for questions.

Mr. Buschur, Mr. Alford really talked in terms of the same thing you were, the project labor agreements, the fact that our mandating that only unions need apply in the trades, often creates a situation in which many of the businesses that he represents are effectively locked out of the process. Now, you don't look like a black minority owned business, so I am not sure he was talking about you, but in a sense isn't that beyond just a regulatory impediment? Isn't it simply the Federal Government agreeing and demanding that something cost more, and then paying more?

And my point to it is, it is a self-inflicted wound. Government may cost 15 or 20 percent more, but other than locking out Mr. Alford's people, locking you out of the process, since we are willing to pay for all this bureaucracy and waste and excess overhead, isn't it in fact not losing a job, but creating just simply ineffective jobs?

Mr. BUSCHUR. Well, in my opinion, sir, the——

Chairman ISSA. My tongue is in my cheek, you understand.

Mr. BUSCHUR. Please?

Chairman ISSA. My tongue is in my cheek on that question.

Mr. BUSCHUR. We had a good example in the State of Ohio. The Ohio School for the Deaf and Blind bid a project out in two manners, one with a PLA and one without a PLA. The project that was bid without the PLA came in 22 percent lower and had six times as many bidders as the job with the PLA. That is clearly documented; it was public bid opening, the numbers were read.

I guess taking my business hat off and being a taxpayer, I asked the question why. Why would you exclude 85 percent of our construction market and our members, and not allow them to bid on these projects? It just makes no sense to us that this goes on, because those 85 percent contractors are performing work on other projects that are not government related on a daily basis without PLAs and are very successful at it, and are saving customers money.

Chairman ISSA. Obviously, from this part of the dais, I agree, and particularly when I look at needing to crank more than 22 percent of the cost out of government if we are going to balance the budget.

Let me go on to a line of questioning. As a former small business man, I guess a current small business man, still LLCs and LLPs, I have a question which hopefully each of you can relate. The regulatory cost overall for companies with more than 500 employees is rated in this one trillion as about $7,635. But for companies under 500 it is estimated to be about $10,585 per employee.

Now, when I look at that and I look at the figure of one trillion into a $17 trillion economy, it looks to me like between 5 and 10 percent is the cost of regulations overall. So I am going to ask each of you a targeted question. Let's assume that we could get rid of just 2 percent of that 10 percent on the back of each of your businesses. What would happen if you could, each of you, whether it is avocados from California, or your services on molded products and thermal set products, or your contracting, what if you could shave 2 or 3 percent off? Not the whole 10 percent. What happens

if you shave 3 percent off of your cost of doing business, what does it do to your typical winning or not winning a bid? Mr. Buschur.

Mr. BUSCHUR. Well, I guess in our situation, whether it is 1 percent, 2 percent, whatever we can take off our overhead account is going to make us more competitive. An example, we had our general superintendent retire the middle of last year and we did not replace him; we are doing the work with my vice president and myself. We didn't have the funds, nor could we be competitive if we put that back online. Right now I have a girl that spends about 30 hours a week taking care of prevailing wage reports.

Chairman ISSA. OK, let me get to everyone, because my time is expiring. And I will start with Mr. Timmons and come back to Mr. Fredrich.

For a national manufacturer competing globally, what does 2 or 3 percent do if they can lower the price of their overall product by that amount?

Mr. TIMMONS. Well, Mr. Chairman, overall, it is 18 percent more expensive to do business in the United States than it is in a country that is a developed economy. So any amount off of that 18 percent allows us to be more competitive. By the way, that 18 percent is derived from the cost of regulation, also energy and tort cost; it does not include labor.

Chairman ISSA. Right. I realize it ripples through.

Mr. TIMMONS. So every percentage decrease in the cost of doing business allows a manufacturer to reinvest money into its company, it allows it to expand it, it allows it to create jobs, which is our ultimate goal.

Chairman ISSA. And I am using the hypothetical number. You can use your own numbers.

Mr. Nassif, assuming that you get water, what does that do for avocados and other products competing against Mexico and the rest of the world?

Mr. NASSIF. Well, clearly, if we have the adequate water supply, we are going to be able to be more productive on the land, and the more you can produce per acre, the less water you use and the less fertilizers and insecticides and pesticides you use. In our industry, we are not price makers, we are price takers, so the retail buyers and the food service buyers tell us how much they are going to pay.

Obviously, if we can cut a couple percentage points, that helps us to be more competitive. But because we are in a global market, we are not competing against the other State, necessarily, or the farmer next door, we are competing against the world, and in the world they don't have the same regulatory burdens we have. Therefore, even if 2 percent were cut, they could still look to another country like China or Mexico or anywhere in the southern hemisphere and find a lower price. So then we have to compete on quality and food safety.

Chairman ISSA. OK.

Quickly, Mr. Alford.

Mr. ALFORD. Same question?

Chairman ISSA. Just the same genre. If we reduce this down to the portion that Mr. Cummings and I might be able to provide in regulatory relief, knowing you are not going to get all $10,000 per employee off, what do those pieces of two or $3,000 per employee,

what does that do for the businesses you represent, and then for Mr. Fredrich, and we will have to wrap up?

Mr. ALFORD. It certainly makes it more competitive, makes them more competitive. They would win more contracts, and winning more contracts from that property would invest back into the company to grow or add jobs.

Chairman ISSA. Mr. Fredrich.

Mr. FREDRICH. I will give you a specific. We are bidding right now on a water pump cover for Volkswagen. We don't sell it directly to Volkswagen; we sell it to a company called Bocar. Bocar is located in Mexico. That contract will be awarded on 1 or 2 percent on the price of that, and I think we are going to get it, I do, because we are very close. But as you burden—and that, by the way, in terms of jobs, that is five jobs, five full-time jobs to fulfill that contract. If we get it, five new jobs; we don't get it, Mexico.

Chairman ISSA. Thank you.

I now recognize the gentleman from Maryland, and I would ask unanimous consent he be allowed to have two additional minutes.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

I want to thank all of you for your testimony. I don't think it has been unreasonable. I think that you have highlighted a number of things. And I too know what it is, Mr. Fredrich, to run a small business; I ran a small law firm for 20 years. I also know the struggles that small businesses go through. So I want to thank all of you.

As I listened to you, particularly you, Mr. Timmons, I could not help but—and perhaps this will be the subject for another hearing—but when I think about what I think it was—well, one of you talked about Mexico. Was it you, Mr Fredrich? And I wonder when those jobs go to Mexico, I wonder what Mexico's standards are with regard to, for example, child labor; with regard to, for example, pollution, things of that nature.

And perhaps it might be a good idea, Mr. Chairman, if we begin to look at those things too, because America is better than that. We are better. We set a high standard for the world. So that leads me to talk about a witness that is not here today, and I wish he was. His name is Stanley Stewart and he goes by the nickname of Goose. He is not from my district, he is not from the inner city of Baltimore; he is from West Virginia. And he was one of the few coal miners to survive the explosion in the Upper Big Branch Mine in West Virginia.

Mr. Stewart wrote to the committee to support a proposed regulation to require mining companies to create refuge alternatives during emergencies. I ask unanimous consent that his letter be placed into the record and I would like to read from it now.

Chairman ISSA. Without objection, so ordered.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

[The information referred to follows:]

Cummings KC
Accepted- no objection

My name is Stanley "Goose" Stewart and I actively worked as an underground coal miner for 34 years, until the explosion of the Upper Big Branch Mine in Montcoal, West Virginia. I worked at UBB since it was bought by Massey in 1995. I was 300 feet underground heading to my section to begin my job as a Continuous Miner Operator when the explosion happened.

I lost 29 of my friends that day and experienced the trauma of giving CPR to men that had families, friends and lives that closely resembled my own. I had to stack their bodies and cover them with blankets. I sat and looked at them for hours waiting for ambulances to come and take those 7 bodies of the men who I had just tried to save. I still see their faces, covered in layers of soot so black that I couldn't tell one man from another. I still have nightmares about that day and my entire family is still hurting from that one moment in history.

I have personally seen the consequences of a coal company neglecting to follow the laws as they are written today. Massey continually blatantly disregarded the laws by camouflaging things when mine inspectors would be onsite or to get permission to operate after being shut down. After the inspectors would leave, the company would go back to their unlawful acts.

Coal companies today are making large amounts of profit. It would be absurd to weaken the mine regulations and the enforcement capabilities of state and federal mine inspectors unless Congress and large corporations don't mind seeing more tragedies like that of April 5, 2010. It wouldn't have to be a tragedy that reaches national attention with scores of miners killed. It could be one killed today or two next month. These deaths are the result of rogue operators "gaming" the system and not obeying the mine laws. If we want to protect our miners the laws need strengthened and the people with the power to enforce these laws need to have more authority to ensure they are enforced. Using regulations as way to give these companies more control and workers less rights equals death or injury for millions of working Americans.

In regard to the mine rescue chambers or refuge alternatives, I would like to state my feelings about those. I have trained on the use of these containers and I am well aware of their capabilities. Although they may not be needed very often, if they are needed they will work. Had they been in place during the Sago disaster, those men would have lived. If the explosion at UBB had not been so massive as to kill my friends on site, those men would have lived if they had made it to one of those chambers. If they can save one man or two dozen they are worth it. The cost is minimal to save one life.

There is no more miserable place to die, in my opinion, than a coal mine. The coal operators can make tremendous amounts of money and still ensure the safety of the men and women who mine coal for their profit. My wife told me that the only thing that gave her hope during April 5th was the thought that if I were underground, that I had made it to one of those chambers. During those terrible hours of her grief and uncertainty when information was nonexistent, she had that last bit of hope that I was sitting in that chamber waiting to be rescued. The comfort to a coal miner's family to hope that their husband, brother, son or father could be safe in one of those chambers is worth more than any money, greed or profit.

You were elected to represent the American people, but more importantly, you <u>are</u> Americans and at the very base of it all, you are human beings. The safety of your American people should mean more to you than extra profits for big corporations. It seems wrong to justify the filling of corporate bank accounts with the blood of American workers and the tears of their families.

I am just one man whose opinion is against many corporate and industry "experts"; but I'm a man who has seen things that no man should see. I'm a man who has had to experience things no human should live through. I am suffering the result of a large company disregarding regulations set by law that were written in the blood of those coal miners who died in the past. These regulations that some say should be disregarded are in place to ensure the safety of millions of Americans.

Regulations shouldn't exclude profits. In my opinion it would save American jobs and American companies. How can a company make a profit if it is paying out settlements or defending itself against

lawsuits? Wouldn't it help Americans to have a safe environment to work so the large corporations don't close due to worker injury and wrongful death lawsuits? Wouldn't having regulations in place ensure that companies have something to go by to know they are doing all they can to keep their employees safe? If a company sends its jobs overseas to countries that don't care about the safety of their workers, the companies will make a profit, but Americans will lose jobs. Isn't that what you are trying to avoid?
I urge everyone to consider the result of your actions. Regulations do not cut into profit; they protect the people who work to create a profit for a company.

Thank you,
Stanley Goose Stewart, Coal Miner
Orgas, West Virginia

Mr. CUMMINGS. First, Mr. Stewart described the tragedy that cost him 29 friends that day, and this is what he said. He said, I had to stack their bodies and cover them with blankets. I can still see their faces covered in layers of soot so black that I couldn't tell one man from another. Mr. Stewart went on to describe why refuge alternatives are necessary, and he said this: Had they been in place during the Sego disaster, those men would have lived. There is no more miserable place to die, in my opinion, than a coal mine. The coal operators can make tremendous amounts of money and still ensure safety of the men and women who mine the coal for their profit. I am just one man whose opinion is against many corporate and industry experts. But I am a man who has seen things that no man should ever see.

Mr. Stewart concluded his letter by saying this: These regulations that some say should be disregarded in place to ensure the safety of millions of Americans. Regulations do not cut into profit, they protect the people who work to create a profit for a company.

Mr. Chairman, I have said it repeatedly that, for this committee, we cannot focus on just the cost of regulations, we must also focus on the benefits and the health and the welfare of American people, and I know that these gentlemen share it.

As I listened to you, Mr Fredrich, I could not help but think back to my days in the Maryland legislature. I was the expert for 15 years on workman's compensation, and I know the cost of workman's comp. So we have a lot of things that go into why some jobs do not stay here in America. So the question then becomes, at some point, what will our standard be? Will we bend to a lower standard, where children are being exploited, for example, so that we can make more profit? I don't know.

But let me go to you, Mr. Alford. I just want to set the record straight. You said that BP was the only company cited for OSHA violations?

Mr. ALFORD. No, sir.

Mr. CUMMINGS. All right. What did you say?

Mr. ALFORD. I said if you take the U.S. oil industry and their violations combined, it would only be a fraction of the total of BP's fines.

Mr. CUMMINGS. All right, I want to make it clear, on October 9, 2009, OSHA cited ConocoPhillips for repeat workplace safety and health hazards. On that date, OSHA cited Conoco for three repeat violations and four serious citations. June 2010 OSHA cited the firm Infinium, a joint venture between Shell and Exxon, for 22 workplace safety violations, including exposing employees to chemical hazards.

And I am just going to stop there, but that is why I wanted—and I think the chairman will agree that we have to hear the whole story.

Mr. ALFORD. Sir——

Mr. CUMMINGS. I have another question for you, sir.

Mr. ALFORD. OK.

Mr. CUMMINGS. I would like to ask all the witnesses this. In the State of the Union, the President proposed an initiative to promote economic growth by modernizing the Nation's infrastructure. On January 26th, the U.S. Chamber of Commerce and the AFL–CIO

issued a joint statement supporting this proposal. It is rare when these two groups agree, but this is what they said: "Whether it is building roads, bridges, high speed, broadband, energy systems, schools, these projects not only create jobs and demand for business, they are an investment in building the modern infrastructure our country needs to compete in a global society."

So, Mr. Alford, since your organization works closely with the U.S. Chamber of Commerce, do you not?

Mr. ALFORD. I am on the board of the U.S. Chamber of Commerce, sir.

Mr. CUMMINGS. So I assume that you would support these proposals, would you not?

Mr. ALFORD. It depends on the particular proposal. I don't want project labor agreements. That is certain. Nor does the U.S. Chamber.

Mr. CUMMINGS. So we are talking about—you sit on the board? Did that come before you, by the way, I am just curious, as a board member?

Mr. ALFORD. Let me clarify something, please, on the U.S. Chamber.

Mr. CUMMINGS. Sure.

Mr. ALFORD. What the President has done, they were talking about high speed rails. The U.S. Chamber agreed with AFL–CIO that the Nation needs high speed rails. It was not a broad, general statement saying all the infrastructure should go together or, as you put it, we are in concert with the AFL–CIO. We are not. We don't believe in card check, we don't believe in project labor agreements. We don't believe in a lot of things.

Mr. CUMMINGS. Well, as my time runs out, I want to thank you for what you just said, but I am just reading from the joint statement. It says whether it is building roads, bridges, high speed, high speed, broadband, energy systems, schools, these projects not only create jobs and demand for business, they are an investment in building the modern infrastructure our country needs to compete in a global society.

I see my time has run out, and I want to thank the chairman for the additional 2 minutes.

Chairman ISSA. You are most welcome.

I would ask unanimous consent that Appendix 1 from our preliminary staff report on all of the submissions be placed in the record at this time so that there is a complete list of all the complaints, not one of which was about mine safety. Without objection, so ordered.

[The information referred to follows:]

Appendix I

REGULATIONS BY AGENCY

ENVIRONMENTAL PROTECTION AGENCY	
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**
Atrazine (Herbicide) Re-Evaluation (Potential): The EPA began a re-evaluation of Atrazine in 2009 although not due for re-evaluation until 2013. Atrazine is an agricultural herbicide primarily used on corn, sorghum, and sugarcane, and is applied most heavily in the Midwest.	American Farm Bureau Federation
Boiler & Process Heater Maximum Achievable Control Technology (MACT) (Boiler MACT), 75 Fed. Reg. 32682 (proposed April 29, 2010) (to be codified at 40 C.F.R. pts. 60, 63, and 24): This rule addresses emissions from boilers, process heaters, and solid waste incinerators. On December 7, 2010, EPA sought an extension of time from the District Court for the District of Columbia to re-propose and finalize these standards.	Air-Conditioning, Heating and Refrigeration Institute The Aluminum Association American Chemistry Council American Coatings Association American Coke and Chemicals Institute American Forest and Paper Association American Home Furnishings Alliance American Iron and Steel Institute APA—The Engineered Wood Association Business Roundtable Chamber of Commerce ConocoPhillips, Inc. Council of Industrial Boilers Industrial Energy Consumers of America Kitchen Cabinet Manufacturers Association Metal Treating Institute Motor and Equipment Manufacturers Association National Asphalt Pavement Association National Association of Manufacturers National Black Chamber of Commerce National Federation of Independent Business National Mining Association National Oilseed Processors Association Small Business & Entrepreneurship Council Society of Chemical Manufacturers and Affiliates Textile Rental Services Association
Brick and Ceramic Kilns Maximum Achievable Control Technology (MACT) (Potential)	The Aluminum Association Brick Industry Association
California Clean Air Act Pre-emption Waiver, 76 Fed. Reg. 5368: California agreed not to enforce its motor vehicle Greenhouse Gas (GHG) rule in exchange for EPA granting a waiver and issuing CAA regulations for new motor vehicles.	Chamber of Commerce National Automobile Dealers Association

Central Appalachian Coal (CAPP): Review of Appalachian Surface Coal Mining Activities under Clean Water Act Section 404, National Environmental Policy Act (NEPA), and the Environmental Justice Executive Order (E.O. 12898): On April 1, 2010, the EPA issued three documents that seek to impose specific conductivity limits on discharges from valley fills that would ensure in-stream conductivity levels do not exceed 300-500 uS/cm.	American Coke and Chemicals Institute Industrial Energy Consumers of America National Mining Association National Sand, Stone, and Gravel Association
Chesapeake Bay Total Maximum Daily Load (TMDL): On December 29, 2010, EPA established the TMDL, a comprehensive "pollution diet" with rigorous accountability measures to initiate sweeping actions to restore clean water in the Chesapeake Bay and the region's streams, creeks and rivers. The TMDL is the largest ever developed by EPA and encompasses 64,000 square-mile watershed.	Agricultural Retailers Association American Farm Bureau Federation American Forest and Paper Association Associated General Contractors The Fertilizer Institute Industrial Energy Consumers of America National Alliance of Forest Owners Responsible Industry for a Sound Environment
Chemical Manufacturing Area Source Standards Final Rule 40 C.F.R. § 63 (2009): Finalized on October 29, 2009, this rule establishes national emission standards for air pollutants from "area" chemical manufacturing sources.	Society of Chemical Manufacturers and Affiliates
Clean Water Act Section 404(c) "Veto Authority" 33 U.S.C. 1344(c): authorizes EPA to prohibit, restrict, or deny the discharge of dredged or fill material at defined sites. Opponents of the mining in the area of the Pebble Project have requested the EPA to prohibit under 404(c).	Pebble Project
Cleaning Products Claims Policy under the Federal Insecticide, Fungicide, and Rodenticide (FIRFA) 7 U.S.C. 136 et seq. (1996): Change in EPA guidance regarding cleaning of mold and mildew stains	American Coatings Association Biotechnology Industry
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 108(b)—Financial Responsibility Requirements, 75 Fed. Reg. 816 (proposed Jan. 6, 2010) (to be codified 40 C.F.R. pt. 320): EPA has discretionary authority to impose financial responsibility requirements on industrial sectors "consistent with the degree of risk associated with the production, transportation, treatment, storage, or disposal of hazardous waste."	Industrial Energy Consumers of America National Mining Association NTMA Precision Precision Machined Products Association Precision Metalforming Association
Concentrated Animal Feeding Operations (CAFOs) and NPDES Permits (Potential): EPA working on regulations that are expected to require small- and medium-sized CAFOs to obtain NPEDES permits as well as mandating use of more aggressive nutrient management plans.	American Farm Bureau Federation

Cooling Water Intake Structures (Clean Water Act Section 316(b)) (Potential): EPA is developing regulations under the Clean Water Act Section 316(b) that requires the location, design, construction and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.	American Iron and Steel Institute
	American Petroleum Institute
	Business Roundtable
	Chamber of Commerce
	ConocoPhillips, Inc.
	Council of Industrial Boiler Owners
	Edison Electric Institute
	Electric Reliability Coordinating Council
	Industrial Energy Consumers of America
	National Mining Association
Draft Guidance for Pesticide Registrants on Pesticide Drift Labeling (Pesticide Spray Drift), 74 Fed. Reg. 57166 (proposed on Nov. 4, 2009): EPA proposed guidance for new pesticide labeling to reduce off-target spray and dust drift.	Agricultural Retailers Association
	National Alliance of Forest Owners
Dioxin in Soil Recommended Interim Preliminary Remediation Goals: the EPA developed draft interim preliminary remediation goals to assess the human health risks from exposures to dioxin in soil.	American Chemistry Council
Disposal of Coal Combustion Residuals (CCRs) Proposed Rule, 75 Fed. Reg. 35127 (proposed June 21, 2010) (to be codified at 40 C.F.R. pt. 257, 261, 264 et al.): EPA proposed on June 21, 2010 to regulate for the first time coal ash (coal combustion residuals) to address the risks from the disposal of wastes generated by electric utilities and independent power producers.	American Forest and Paper Association
	Associated General Contractors
	Chamber of Commerce
	Council of Industrial Boiler Owners
	Edison Electric Institute
	Electric Reliability Coordinating Council
	Industrial Energy Consumers of America
	Murray Energy Corporation
	National Association of Home Builders
	National Concrete Masonry Association
	National Mining Association
	National Sand, Stone, and Gravel Association
	Portland Cement Association
E15 Ethanol Fuel Rule (EPA420-F-11-003): On October 13, 2010, the EPA granted a waiver for E15 fuel (blend of 15% ethanol and 85% gasoline) to be used cars and light trucks manufactured between 2001 and 2006.	American Land Title Association
	American Petroleum Institute
	Association of International Automobile Manufacturers
	ConocoPhillips, Inc.
	Grocery Manufacturers Association
	Mazda
	National Automobile Dealers Association
	National Marine Manufacturers Association
	National Petrochemical and Refiners Association
	Small Business & Entrepreneurship Council
	Toyota Motor North America
Effluent Limit Guideline Rule for Construction Site Runoff, 40 C.F.R. § 450 (2009): EPA issued a final rule on December 1, 2009 regulating stormwater discharges from construction and development industry.	Associated Builders & Contractors
	Associated General Contractors
	Council of Industrial Boiler Owners
	Independent Petroleum Association of America
	National Association of Home Builders
	National Sand, Stone, and Gravel Association

Effluent Limitation Guidelines and New Source Performance Standards for the New Airport Deicing Category, 74 Fed. Reg. 44676 (proposed Aug. 28, 2009) (to be codified at 40 C.F.R. pt. 449): EPA is establishing new technology-based guidelines and standards for the discharges from airport deicing efforts.	Air Transport Association
Emergency Planning and Community Right-to-Know Act (Region 4 interpretation of the Fertilizer Retailer Exemption)	Agricultural Retailers Association
Endocrine Disruptor Screening Program for Chemicals (EDSP): EPA announced the initial list of chemicals to be screened for their potential effects on the endocrine system on April 15, 2009 and the first test orders were issued on October 29, 2009. EPA then developed a second list of chemicals for screening and published three related Federal Register Notices on November 17, 2010.	Consumer Specialty Products Association The Methanol Institute
Formaldehyde Emission from Pressed Wood Products, 73 Fed. Reg. 73620 (advanced notice of proposed rulemaking, Dec. 3, 2008) (to be codified to 40 C.F.R. Chapter I): pursuant to the Formaldehyde Standards for Composite Wood Products Act, EPA must promulgate regulations to implement this law by January 1, 2013.	Composite Panel Association Kitchen Cabinet Manufacturers Association
Greenhouse Gas (GHG) Emission Tailoring Rule, 40 CFR § 52, 70 (2009): this final rule includes a step-by-step implementation strategy issuing federally-enforceable permits to the largest, most environmentally significant sources beginning January 2, 2011.	Agricultural Retailers Association American Coke and Chemicals Institute American Farm Bureau Federation American Forest and Paper Association American Iron and Steel Institute American Petroleum Institute APA—The Engineered Wood Association Chamber of Commerce ConocoPhillips, Inc. The Fertilizer Institute Industrial Energy Consumers of America Metal Treating Institute Murray Energy Corporation National Alliance of Forest Owners National Association of Home Builders National Black Chamber of Commerce National Electrical Manufacturers Association National Oilseed Processors Association National Petrochemical and Refiners Association Portland Cement Association

Greenhouse Gas (GHG) Emissions Regulations under the Clean Air Act including: **Fuel Economy Greenhouse Gas Rules for MY 2012-2016**: on April 1, 2010, the EPA and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA) issued a final rule to establish greenhouse gas (GHG) and corporate average fuel economy (CAFE) standards for light-duty vehicles. **Fuel Economy Greenhouse Gas Rules (Proposed) for MY 2017-2025**: on January 24, 2011, the EPA along with the Department of Transportation and the state of California announced a single timeframe for proposing fuel economy and greenhouse gas standards for MY 2017-2025 cars and light-trucks. **Greenhouse Gas (GHG) and Fuel Efficiency Standards for Heavy-Duty Vehicles**: in response to a Presidential Memorandum of May 21, 2010, the EPA with the National Highway Traffic Safety Administration (NHTSA) announced they will initiate a rulemaking to reduce GHG emissions for commercial medium- and heavy-duty trucks. **Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from the Iron and Steel Industry**	Alliance of Automobile Manufacturers (MY 2017-2025) American Bakers Association (General) American Iron and Steel Institute (BACT) American Petroleum Institute (NSPS) Associated Builders & Contractors (General) Association of American Railroads (General) Brick Industry Association (NSPS) Business Roundtable (NSPS, BACT) Chamber of Commerce (General) Charlotte Pipe and Foundry Company (General) Council of Industrial Boiler Owners (General) Electric Reliability Coordinating Council (General) Ford (MY 2017-2025) Forging Industry Association (General) Independent Petroleum Association of America (General) Industrial Energy Consumers of America (NSPS) Motor and Equipment Manufacturers Association (Car rules) Murray Energy Corporation (General) National Automobile Dealers Association (MY 2012-2016) National Black Chamber of Commerce (General) National Council of Textile Organizations National Petrochemical and Refiners Association (BACT, general) National Stone, Sand, and Gravel Association (Small engines) Owner Operator Independent Drivers Association (Heavy-Duty Vehicles) Small Business & Entrepreneurship Council (General) Toyota Motor North America
Hydrogen Sulfide as a Hazardous Air Pollutant (Potential)	American Coke and Chemicals Institute Independent Petroleum Association of America Industrial Energy Consumers of America
Integrated Risk Information System (IRIS) Review of Inorganic Arsenic (Draft Review): the EPA published the toxicological review of inorganic arsenic on February 19, 2010, which addresses only cancer human health effects that may result from chronic exposure.	National Mining Association
Integrated Risk Information System (IRIS) Review of Formaldehyde—Inhalation Assessment (Draft Review): On June 2, 2010, EPA released the draft assessment, which addresses both non-cancer and cancer human health effects that may result from chronic inhalation exposure.	APA—The Engineered Wood Association Kitchen Cabinet Manufacturers Association
Integrated Risk Information System (IRIS) Review of Methanol (Draft Review): EPA released an external review draft in January 2010 for public review and comment, which addresses both non-cancer and cancer human health effects that may result from chronic exposure.	The Methanol Institute

Interstate Transport Rule, 75 Fed. Reg. 45210 (proposed Aug. 2, 2010) (to be codified at 40 C.F.R. pt. 51, 52, 72, 78, and 97): this rule would require significant reductions in sulfur dioxide and nitrogen dioxide emissions that cross state lines.	Chamber of Commerce
	Council of Industrial Boiler Owners
	Electric Reliability Coordinating Council
	Industrial Energy Consumers of America
	Murray Energy Corporation
	National Mining Association
Lead Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program (Proposed) 75 Fed. Reg. 38959 (proposed July 7, 2010) (to be codified at 40 C.F.R. pt. 745): EPA requires contractors to perform "dust-wipe testing" after most construction activities to show that lead levels comply with EPA standards.	Associated General Contractors
Lead: Renovation, Repair, and Painting Program, 40 C.F.R. § 745 (2008): beginning April 22, 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination.	Air Conditioning Contractors of America
	American Architectural Manufacturers Association
	Associated Builders & Contractors
	Associated General Contractors
	Chamber of Commerce
	Electronic Security Association
	Hearth, Patio, & Barbecue Association
	Insulation Contractors Association of America
	Manufactured Housing Institute
	National Apartment Association
	National Association of Home Builders
	NAIOP, the Commercial Real Estate Development Association
	National Federation of Independent Business
	National Lumber & Building Materials Dealers
	National Multi Housing Council
	National Glass Association
	Plumbing-Heating-Cooling Contractors—National Association
	The Real Estate Roundtable
	Vinyl Siding Institute
	Window & Door Manufacturers Association
Mandatory Reporting of Greenhouse Gases (GHG) Rule, 40 C.F.R. § 98 (2010): this rule requires reporting of greenhouse gas (GHG) data and other relevant information from large sources and suppliers in the United States.	American Forest and Paper Association
	Association of Equipment Manufacturers
	Conoco-Phillips, Inc.
	Industrial Energy Consumers of America
	Portland Cement Association
Nanopesticide Policy (Proposed): EPA proposed a nanopesticide policy in April 2010, which requires the presence of a nanomaterial in a registered pesticide to be reported under the "unreasonable adverse effect" provision of FIFRA.	Silver Nanotechnology Working Group
National Ambient Air Quality Standards (NAAQS) for Lead 40 C.F.R. § 58 (2008): in October 2008, EPA substantially reduced the NAAQS for lead. EPA made final revisions to the ambient monitoring requirements for measuring lead in the air on December 14, 2010.	Non-Ferrous Founders' Society

National Ambient Air Quality Standards (NAAQS) for Nitrogen Oxide 40 CFR §§ 50, 58 (2010): On January 22, 2010, the EPA strengthened the NAAQS for nitrogen dioxide.	American Coke and Chemicals Institute
	American Farm Bureau Federation
	American Iron and Steel Institute
	Associated General Contractors
	Council of Industrial Boiler Owners
	Electric Reliability Coordinating Council
	Industrial Energy Consumers of America
	Portland Cement Association
National Ambient Air Quality Standards (NAAQS) for Ozone, 75 Fed. Reg. 2938 (proposed Jan. 19, 2010) (to be codified at 40 C.F.R. pt. 50, 58): EPA is lowering the NAAQS for the ozone to somewhere in the 60-70 parts per billion range. On December 8, 2010, the EPA Administrator requested more input from agency's science advisors. EPA intends to set a final standard by the end of July, 2011.	American Coatings Association
	American Coke and Chemicals Institute
	American Forest and Paper Association
	American Iron and Steel Institute
	American Petroleum Institute
	APA—The Engineered Wood Association
	Associated General Contractors
	Brick Industry Association
	Business Roundtable
	Chamber of Commerce
	Charlotte Pipe and Foundry Company
	Conoco-Phillips, Inc.
	Consumer Specialty Products Association
	Council of Industrial Boiler Owners
	Electric Reliability Coordinating Council
	Industrial Energy Consumers of America
	Metal Treating Institute
	Murray Energy Corporation
	National Association of Home Builders
	National Association of Manufacturers
	National Black Chamber of Commerce
	National Federation of Independent Business
	National Oilseed Processors Association
	National Petrochemical and Refiners Association
	Portland Cement Association
	Small Business & Entrepreneurship Council
National Ambient Air Quality Standards (NAAQS) for Particulate Matter (Potential): EPA will propose NAAQS for particulate matter in early 2011, with final regulations due in 2012.	Agricultural Retailers Association
	American Coke and Chemicals Institute
	American Farm Bureau Federation
	American Forest and Paper Association
	American Iron and Steel Institute
	Chamber of Commerce
	Charlotte Pipe and Foundry Company
	Council of Industrial Boiler Owners
	Electric Reliability Coordinating Council
	Industrial Energy Consumers of America
	National Asphalt Pavement Association
	National Sand, Stone, and Gravel Association
	Portland Cement Association

National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide 40 C.F.R. §§50, 53, 58 (2010): EPA strengthened the NAAQS for sulfur dioxide on June 2, 2010	The Aluminum Association American Coke and Chemicals Institute American Iron and Steel Institute Council of Industrial Boiler Owners Industrial Energy Consumers of America Portland Cement Association
National Emission Standards for Hazardous Air Pollutants (NESHAPs) from the Portland Cement Manufacturing Industry 40 CF.R. §§ 60, 63 (2010): regulates emission limits for mercury, THC, and particulate matter from new and existing kilns located at major sources.	Cemex Portland Cement Association
Navigable Waters Guidance: EPA issued a guidance document under review at the Office of Management and Budget (OMB).	American Farm Bureau Federation Chamber of Commerce
New Source Performance Standards (NSPS) for Portland Cement Plants 40 C.F.R. §§ 60, 63 (2010): regulates emission limits for particulate matter, nitrogen oxides, and sulfur dioxide for facilities that commence construction, modification, or reconstruction after June 16, 2008.	Cemex Portland Cement Association
Non-Hazardous Materials that are Solid Waste (proposed April 29, 2010) (to be codified at 40 C.F.R. pt. 241): this rule seeks to clarify which non-hazardous secondary materials are or are not solid wastes when burned in combustion units.	American Home Furnishings Alliance Automotive Aftermarket Industry Association Chamber of Commerce Industrial Energy Consumers of America IPC, The Association Connecting Electronics Industries Non-Ferrous Founders' Society
Numeric Nutrient Water Quality Criteria for Florida Waters, 40 C.F.R. §131 (2010): the final rule published on December 6, 2010, issues numeric water quality criteria for nitrogen/phosphorus pollution to protect aquatic life in lakes, flowing waters, and springs within Florida	Agricultural Retailers Association American Forest and Paper Association CF Industries The Fertilizer Institute Industrial Energy Consumers of America
Polychlorinated Biphenyl (PCBs) Analytical Method: PEA has proposed an analytical test method that measures in a very low range of parts per quadrillion.	American Forest and Paper Association
Pesticide Permits—Proposed Clean Water Act National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit Program, 75 Fed. 13468 (proposed June 4, 2010): Proposed permit system that will be put in place by April 9, 2011.	Agricultural Retailers Association American Farm Bureau Federation Responsible Industry for a Sound Environment
Prior Converted Croplands: EPA (with Army Corps of Engineers) recapturing prior converted croplands (PCC) (wetlands drained before 1985 that no longer exhibit the characteristics of wetlands) by altering guidance to claim a "change of use" places PCC under the Clean Water Act.	American Farm Bureau Federation
Residual Risk Reviews of the Pulp and Paper Industry: Pursuant to a settlement agreement, EPA must propose its residual risk determination for pulp and paper mills by June 15, 2011.	American Forest and Paper Association

Safe Drinking Water Act: Hydraulic Fracturing Regulation (Potential)	Conoco-Phillips, Inc. Independent Petroleum Association of America
Spill Prevention, Control, and Countermeasure (SPCC) Regulation, 40 C.F.R. § 112 (2008): This rule's purpose is to help facilities prevent a discharge of oil into navigable waters or adjoining shorelines.	American Farm Bureau Associated General Contractors
Spruce Mine Clean Water Act Permit (Revocation): for the first time, EPA revoked a previously issued permit in January 2011.	Chamber of Commerce National Sand, Stone, and Gravel Association
Texas Air Permits: Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Flexible Permits, 40 C.F.R. § 52 (2010): EPA is proposing disapproval of submittals from the State of Texas, through the Texas Commission on Environmental Quality (TCEQ) to revise the Texas SIP to include a new type of NSR permitting program, Flexible Permits (the Texas Flexible Permits State Program or the Program).	Chamber of Commerce National Petrochemical and Refiners Association
Toxic Release Inventory (TRI) Articles Exemption Clarification Proposed Rule, 74 Fed. Reg. 42625 (proposed Aug. 24, 2009) (to be codified at 40 C.F.R. pt. 372): EPA is proposing to remove a paragraph of guidance dealing with releases due to natural weathering of products, and is proposing an interpretation of how the articles exemption applies to the Wood Treating Industry, specifically to treated wood that has completed the treatment process.	American Wire Producers Association Independent Petroleum Association of America NTMA Precision Precision Machined Products Association Precision Metalforming Association
Toxic Substances Control Act (TSCA) Chemical Action Plans 15 U.S.C. §2601 et seq. (1976): In September 2009, EPA announced a comprehensive strategy for chemical management including "action plans" for 12 chemical families.	Grocery Manufacturers Association Society of Plastics Industry
Toxic Substances Control Act (TSCA) Proposed Rule to amend the Inventory Update Rule (IUR) 75 Fed Reg. 19830 (proposed Aug. 13, 2010) (to be codified at 40 C.F.R. pt. 704, 710, 711): EPA is proposing to amend the reporting requirements.	American Coatings Association Industrial Energy Consumers of America IPC, The Association Connecting Electronics Industries Society of Plastics Industry
Toxic Substances Control Act (TSCA) Nanoscale Materials/Products Regulation: To ensure that nanoscale materials are manufactured and used in a manner that protects against unreasonable risks to human health and the environment, EPA is pursuing a comprehensive regulatory approach under TSCA.	NanoBusiness Alliance
Toxic Substances Control Act (TSCA) Proposed Test Rule For Coal Tar and Coal Tar-Derived Chemicals	American Coke and Chemicals Institute Society of Plastics Industry
Use of Settlement Agreements: EPA has entered into settlement agreements with environmental organizations, impacting industry outsides the Administrative Procedure Act (APA) rulemaking process.	American Farm Bureau

Utility Boilers Maximum Achievable Control Technology (MACT) (MACT for Power Plants) (Potential): Pursuant to a 2009 consent decree, the EPA must issue a proposed rule new National Emission Standard for Hazardous Air Pollutants (NESHAP) regulation HAP emissions from coal- and oil-fired electric generating units by March 16, 2011 and finalize the rule by November 16, 2011.	Business Roundtable
	Electric Reliability Coordinating Council
	Industrial Energy Consumers of America
	National Mining Association

FINANCIAL SERVICES AGENCIES	
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**
Dodd-Frank CFTC Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants 75 Fed. Reg. 81519 (proposed Dec. 28, 2010) (to be codified at 17 C.F.R. pt. 23): The CTFC issued a proposed rule to prescribe standards for swap dealers and major swap participants related to the timely and accurate confirmation, processing, netting, documentation, and valuation of swaps. The proposed rules would establish requirements for swap confirmation, portfolio reconciliation, and portfolio compression for swap dealers and major swap participants.	Commodity Markets Council
Dodd Frank CFTC Registration of Swap Dealers and Major Swap Participants 75 Fed. Reg. 71397 (proposed Nov. 23, 2010) (to be codified at 17 C.F.R. pts. 3, 23, 170): the CFTC issued a proposed rule to establish the process for registering swap dealers and major swap participants. The proposal would require swaps entities to become members of the National Futures Association and to confirm that persons associated with them are not subject to a statutory disqualification under the Commodity Exchange Act.	ConocoPhillips
Dodd-Frank CFTC Position Limits for Derivatives, 76 Fed. Red. 4752 (proposed Jan. 26, 2011) (to be codified at 17 CFR Parts 1, 150, 151): the CFTC issued a proposed rule to simultaneously establish position limits and limit formulas for certain physical commodity futures and option contracts executed pursuant to the rules of designated contract markets (DCM) and physical commodity swaps that are economically equivalent to such DCM contracts.	Commodity Markets Council Independent Petroleum Association of America
Dodd-Frank SEC Shareholder Approval of Executive Compensation and Golden Parachute Compensation 17 C.F.R. §§ 229, 240, 249 (2011): On January 25, 2011, the SEC issued a final rule relating to shareholder approval of executive compensation and "golden parachute" compensation arrangements required under Dodd-Frank.	American Express Business Roundtable
Dodd-Frank CEO Pay Ratio Disclosure: Dodd-Frank will require all U.S. public companies, companies that are not publicly traded but have public debt, and other companies required to file reports with the SEC to disclose the following compensation metrics: the annual total compensation of the chief executive officer; the median annual total compensation for all employees (except the chief executive officer); and a ratio of these two metrics.	American Express Business Roundtable

Dodd-Frank & the Fair Debt Collection Practices Act, Pub. L. No. 109-351, §§ 801–802, 120 Stat. 1966 (2006): Dodd-Frank transferred the Federal Trade Commission's rulemaking authority under the Fair Debt Collection Practices Act to the Consumer Financial Protection Bureau.	DBA International
Dodd-Frank CFTC Agricultural Commodity Definition, 75 Fed. Reg. 65586 (proposed Oct. 26, 2010) (to be codified at 17 C.F.R. pt. 1): The CFTC issued a proposed rule to define "agricultural commodity" under the Commodity Exchange Act (CEA) as amended by Dodd-Frank.	Commodity Markets Council
Dodd-Frank CFTC Agricultural Swaps, 75 Fed. Reg. 59666 (proposed Sept. 28, 2010) (to be codified at 17 C.F.R. pt. 35): The CFTC issued an advance notice of proposed rulemaking to request comment on the appropriate conditions, restrictions or protections to be included in a rule the CFTC must issue under Dodd-Frank governing the trading of agricultural swaps.	Commodity Markets Council
Dodd-Frank CFTC Disruptive Trading Practices, 75 Fed. Reg. 67301 (proposed Nov. 2, 2010) (to be codified at 17 CFR Chapter 1): The CTFC issued an advance notice of proposed rulemaking to request comment on issuing rules necessary to prohibit trading practices deemed disruptive of fair and equitable trading.	Commodity Markets Council
Dodd-Frank Mandatory Clawbacks: Dodd Frank requires companies listed on a U.S. stock exchange to implement and disclose a policy requiring a company to clawback incentive-based compensation paid to current or former executive officers if the company is required to restate its financials due to material non-compliance with financial reporting requirements. The SEC is responsible for enforcing the clawbacks.	American Express Business Roundtable
Dodd-Frank Federal Reserve Board Debit Card Interchange Fees and Routing (proposed Dec. 16, 2010) (to be codified at 12 C.F.R. pt. 235): The Federal Reserve Board issued a proposed rule to establish standards for debit card interchange fees, regulations governing network fees, and prohibitions against network exclusivity arrangements and routing restrictions.	Credit Union National Association Financial Services Roundtable Small Business & Entrepreneurship Council
Dodd Frank Federal Reserve Board Enhanced Prudential Standards for Large Bank Holding Companies (BHCs) and Nonbank Financial Companies Designated for Consolidated Supervision: The Dodd-Frank Act requires the Federal Reserve Board to establish stricter prudential standards for all BHCs with total consolidated assets of $50 billion or greater and all non-bank financial companies supervised by the Federal Reserve Board. A proposed rule is expected to be issued this spring.	Financial Services Roundtable

Dodd-Frank SEC Facilitating Shareholder Director Nominations ("Proxy Access") 17 C.F.R. §§ 200, 232, 240, 249 (2010): In August 2010, the SEC issued a final rule that requires companies to include board of director nominees by certain shareholders in their proxy materials. Under the rules, shareholders will be eligible to have their nominees included in the proxy materials if they own at least 3 percent of the company's shares continuously for at least the prior three years. However, in October 2010, the SEC announced it would delay implementation of the rule pending the outcome of a court challenge.	American Express Business Roundtable
Dodd-Frank CFTC Prohibition of Market Manipulation, 75 Fed. Reg. 67657 (proposed Nov. 3, 2010) (to be codified at 17 C.F.R. pt. 180): CFTC issued a proposed rule to implement its new anti-manipulation authority. The proposed rules expand and codify the Commission's authority to prohibit manipulation.	Commodity Markets Council
Dodd-Frank SEC Disclosure of Payments by Resource Extraction Issuers, 75 Fed. Reg. 80978 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 229, 249): The SEC issued a proposed rule requiring resource extraction issuers to include in an annual report information relating to any payment made by the issuer, or by a subsidiary or another entity controlled by the issuer, to a foreign government or the Federal Government for the purpose of the commercial development of oil, natural gas, or minerals.	Business Roundtable ConocoPhillips
Dodd-Frank SEC Mine Safety Disclosure, 75 Fed. Reg. 80374 (proposed Dec. 15, 2010) (to be codified at 17 C.F.R. pt. 229, 239, 249): The SEC issued a proposed rule to outline the way mining companies must disclose certain information about mine safety and health standards to investors.	Business Roundtable

Dodd-Frank SEC Conflict Minerals, 75 Fed. Reg. 80948 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 229, 249): The SEC issued a proposed rule that would require any issuer for which conflict minerals are necessary to the functionality or production of a product manufactured, or contracted to be manufactured, by that issuer to disclose in the body of its annual report whether its conflict minerals originated in the Democratic Republic of the Congo or an adjoining country. If so, that issuer would be required to furnish a separate report as an exhibit to its annual report that includes, among other matters, a description of the measures taken by the issuer to exercise due diligence on the source and chain of custody of its conflict minerals.	American Petroleum Institute
	Boeing
	Business Roundtable
	IPC – Association Connecting Electronics Industries
	Manufacturing Jewelers and Suppliers of America
	National Electrical Manufacturers Association
Dodd-Frank CFTC and SEC Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant," and "Eligible Contract Participant", 75 Fed. Reg. 80174 (proposed Dec. 21, 2010) (to be codified at 17 C.F.R. pt. 1, 240): The CFTC and the SEC issued a joint proposed rule that would further define a series of terms related to the security-based swaps market, including "swap dealer," "security-based swap dealer," "major swap participant," "major security-based swap participant" and "eligible contract participant."	American Express
	Business Roundtable
	Commodity Markets Council
	ConocoPhillips
	Edison Electric Institute
Dodd-Frank SEC Implementing Whistleblower Provisions, 75 Fed. Reg. 70488 (proposed Nov. 17, 2010) (to be codified at 17 C.F.R. pt. 240, 249): The SEC issued a proposed rule to implement the whistleblower provisions in Dodd Frank. Under regulations proscribed by the SEC, a whistleblower program will be established, and eligible whistleblowers will receive 10-30% of any fine over $1 million that is a result of original information provided to the SEC that leads to the successful enforcement of a covered action.	American Express
	Boeing
	Business Roundtable
Dodd-Frank Volcker Rule: The Volcker Rule amends the Bank Holding Company Act of 1956 to prohibit banks and other banking entities from engaging in proprietary trading and from sponsoring or investing in private equity or hedge funds. The Volcker Rule also prohibits banks and other banking entities from extending credit to, or engaging in other covered transactions with, private equity or hedge funds that they advise, manage, sponsor, or organize. Any transactions between a banking entity and any such fund that are not prohibited must be entered into	Financial Services Roundtable

on arms-length market terms. Finally, the Volcker Rule tasks the Federal Reserve Board with imposing additional capital and quantitative limits on systemically important nonbank financial companies that engage in proprietary trading or that sponsor or invest in private equity or hedge funds.	
Federal Credit Union Act Net Worth Restrictions: The Act requires credit unions to have 7% net worth to be considered well-capitalized and 6% net worth to be adequately capitalized.	Credit Union National Association
Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) of 2008, Pub. L. No. 110-289: Regulators, specifically at the state level, have broadened the scope of regulated activity to include those who perform administrative and clerical tasks as mortgage loan originators, even if they do not offer or negotiate loan terms for compensation or gain.	Manufactured Housing Institute
President's Working Group Report on Money Market Fund Reform, Release No. IC-29497; File No. 4-619: The SEC is seeking comment on the options discussed in the President's Working Group on Financial Markets' study of possible money market fund reforms. One of the proposals considers moving away from the current stable net asset values (NAVs) to a floating NAV.	Boeing
Sarbanes-Oxley Act (SOX), Pub. L. No. 107-204, § 404(b), 116 Stat. 745 (2002): SOX Section 404(b) requires public companies to conduct a review of internal controls over financial reporting and include an external auditor attestation report of those controls in their annual filings.	Biotechnology Industry Organization
Joint Agency Red Flags Rule, 12 C.F.R. § 41 (2007): In 2007, pursuant to the Fair and Accurate Credit Transactions Act of 2003, the OCC, Board, FDIC, OTS, NCUA and FTC jointly issued rules that require financial institutions and creditors to develop and implement identify theft programs. The programs must include identification, detection and response to patterns, practices, or specific activities that could indicate identity theft	American Land Title Association National Automobile Dealers Association
FTC and Federal Reserve Board Fair Credit Reporting Risk-Based Pricing Rule, 16 C.F.R. §§640, 698 (2010): Pursuant to the Fair and Accurate Credit Transaction Act of 2003, the FTC and Federal Reserve Board issued a rule that generally requires a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor.	National Automobile Dealers Association

DEPARTMENT OF LABOR/LABOR ISSUES	
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**
Administration "High Road" Government Contracting Policy: The February 2010 Annual Report of the White House Task Force on the Middle Class announced it is exploring a government contacting policy that would take into account the records of the firms who receive government contracts and the quality of the jobs they create.	Associated Builders and Contractors, Inc. Associated General Contractors Small Business & Entrepreneurship Council
Administration Use of Project Labor Agreements for Federal Construction Projects (E.O. 13502) and 48 C.F.R. § 536.271 (2010): On February 13, 2009, President Obama issued an Executive Order to encourage the use of project labor agreements for large-scale federal construction projects. In April 2010, the Department of Defense, General Services Administration, and National Aeronautics and Space Administration issued a final rule implementing the Executive Order.	Associated Builders and Contractors, Inc. Associated General Contractors Construction Industry Round Table Small Business & Entrepreneurship Council
DOL's Lack of Clarity in Job Duties used for Wage Determinations under the Davis-Bacon Act: Currently, DOL provides wage determination lists for several different classifications of workers, but only limited information is provided about the job duties or union work rules that correspond to those classifications.	Associated Builders and Contractors, Inc.
DOL Persuader Agreements: Employer and Labor Relations Consultant Reporting Under the Labor-Management Reporting and Disclosure Act (LMRDA) (Potential): In the fall of 2010, the Office of Labor Management Standards announced they plan to propose a rule to reinterpret section 203(c) of the LMRDA to narrow the scope of the advice exemption.	Associated Builders and Contractors, Inc.
DOL Right to Know under the Fair Labor Standards Act (FLSA) (Potential): In the fall of 2010, the Wage and Hour Division (WHD) announced they are considering a proposed rule that would required covered employers to notify their employees of their rights under the FLSA and to provide information about hours worked and wage computation. The proposal is expected to be issued in April 2011.	American Bakers Association Associated Builders and Contractors, Inc. National Federation of Independent Business
DOL Wage Rates Under the Davis-Bacon Act: The Wage and Hour Division (WHD) sets "prevailing wages" based on wages paid to various laborers and mechanics employed on construction projects.	Associated Builders and Contractors, Inc.
Employee Benefits Security Administration (EBSA) Definition of the Term "Fiduciary" 75 Fed. Reg. 2142 (proposed Oct. 22, 2010): The EBSA issued a proposed rule to expand the definition of "fiduciary" under the Employee Retirement Income Security Act (ERISA).	Financial Services Forum (note this concern may not reflect the entire membership of the Forum)

NLRB Governing Notification of Employee Rights under the National Labor Relations Act (NLRA), 75 Fed. Reg. 80420 (proposed Dec. 22, 2010) (to be codified to 29 C.F.R. pt. 104): The NLRB issued a proposed rule that would require employers, including labor organizations, to post notices informing their employees of their rights under the NLRA.	Associated Builders and Contractors, Inc. Forging Industry Association Motor and Equipment Manufacturers Association National Council of Textile Organizations National Restaurant Association Non-Ferrous Founders' Society Textile Rental Services Association
OHSA Backing Operations (Potential): In the fall of 2010, OSHA announced it is considering proposing a rule to regulate the backing operations of construction equipment.	Associated General Contractors
OSHA Building Inspectors Partnership (pilot program): In May 2010, OSHA announced it is launching a pilot program to partner with local building inspectors in select American cities to monitor working conditions.	Associated General Contractors
OSHA Combustible Dust, 74 Fed. Reg. 54334 (proposed Oct. 21, 2009) (to be codified at 29 C.F.R. pt. 1910): OSHA issued an advanced notice of proposed rulemaking to develop a proposed standard for combustible dust management. OHSA has determined combustible dust to include "all combustible particulate solids of any size, shape, or chemical composition that could present a fire or deflagration hazard when suspended in air or other oxidizing medium."	American Forest and Paper Association American Iron and Steel Institute American Wire Producers Association APA - The Engineered Wood Association Kitchen Cabinet Manufacturers Association National Lumber & Building Material Dealers Association National Oilseed Processors Association Non-Ferrous Founders' Society Society of Plastics Industry
OSHA Consultation Agreements: Proposed Changes to Consultation Procedures, 75 Fed. Reg. 54064 (proposed Sept. 3, 2010) (to be codified at 29 C.F.R. pt. 1908): OSHA issued a proposed rule to clarify the Assistant Secretary's ability to identify sites to be inspected, regardless of their Safety and Health Achievement and Recognition Programs (SHARP) status. The proposal also permits OSHA compliance officers to proceed with enforcement visits due to referrals from sites undergoing consultation visits or sites that have attained SHARP status. Finally, the proposal limits the deletion period from OSHA's programmed inspection schedule for those employers that participate in the SHARP program.	American Coatings Association American Iron and Steel Institute Associated General Contractors International Bottled Water Association Metal Treating Institute Motor and Equipment Manufacturers Association National Association of Manufacturers National Federation of Independent Business Society of Plastics Industry Textile Rental Services Association
OSHA Cranes and Derricks in Construction, 29 C.F.R. § 1926 (2010): OSHA issued a final rule to update and specify industry work practices to help ensure employee safety during the use of cranes and derrick in construction projects. The rule took effect on November 8, 2010.	Association of Equipment Manufacturers

OSHA Injury & Illness Prevention Program ("I2P2") 75 Fed. Reg. 23637 (proposed May 4, 2010) (to be codified at C.F.R. pt. 1910): OSHA announced it was conducting stakeholder meetings to develop a proposed rule to implement an Injury and Illness Prevention Program. The proposed rule is expected to be issued this spring, and it is likely to address how to plan, implement, evaluate, and improve processes and activities that protect employee safety and health.	American Coatings Association American Iron and Steel Institute Associated Builders and Contractors, Inc. Associated General Contractors Metal Treating Institute Motor and Equipment Manufacturers Association National Association of Manufacturers National Federation of Independent Business National Lumber & Building Material Dealers Association National Oilseed Processors Association Small Business & Entrepreneurship Council Society of Plastics Industry Textile Rental Services Association
OSHA Interpretation of Provisions for Feasible Administrative or Engineering Controls of Occupational Noise 75 Fed. Reg. 64216 (proposed Oct. 19, 2010) (to be codified at 29 C.F.R. pt. 1910, 1926): OSHA issued a proposed interpretation of the term "feasible administrative or engineering controls" to clarify that the term "feasible" means capable of being done. On January 19th, 2011, OSHA announced it was withdrawing its proposed interpretation.	American Coatings Association American Coke and Coal Chemicals Institute American Forest and Paper Association American Iron and Steel Institute APA - The Engineered Wood Association Associated Builders and Contractors, Inc. Associated General Contractors Association of Equipment Manufacturers Boeing Conoco-Phillips, Inc Forging Industry Association International Bottled Water Association Kitchen Cabinet Manufacturers Association Metal Treating Institute Motor and Equipment Manufacturers Association National Association of Manufacturers National Concrete Masonry Association National Council of Textile Organizations National Federation of Independent Business National Lumber & Building Material Dealers Association National Oilseed Processors Association National Tooling and Machining Association Non-Ferrous Founders' Society Precision Machined Products Association Precision Metalforming Association Roaring Springs Water Small Business & Entrepreneurship Council Society of Plastics Industry Textile Rental Services Association Window & Door Manufacturers Association
OSHA Lockout Procedure Guidance: In 2008, OSHA issued a compliance directive to make clear that efforts to label die or tool changes as "routine, repetitive and integral to the production operation" and therefore not subject to lockout would be rejected.	National Tooling and Machining Association Precision Machined Products Association Precision Metalforming Association

OSHA Occupational Exposure to Crystalline Silica (Potential): In the fall of 2010, OSHA announced it intends to pursue a new comprehensive standard for crystalline silica to require provisions for methods of compliance, exposure monitoring, worker training, and medical surveillance. A proposal is expected to be issued in February 2011.	Associated General Contractors Interlocking Concrete Pavement Institute National Concrete Masonry Association
OSHA Occupational Injury and Illness Recording and Reporting Requirements, 75 Fed. Reg. 4728 (proposed Jan. 29, 2010) (to be codified at 29 C.F.R. pt. 1904): OSHA issued a proposed rule to add a column to the OSHA 300 Log that would require employers to record work-related musculoskeletal disorders (MSD). On January 25, 2011, OSHA announced it was temporarily withdrawing its proposed rule to seek further input from small business.	American Coke and Coal Chemicals Institute American Iron and Steel Institute Associated Builders and Contractors, Inc. Associated General Contractors Automotive Aftermarket Industry Association Metal Treating Institute National Federation of Independent Business National Oilseed Processors Association Non-Ferrous Founders' Society Society of Chemical Manufacturers and Affiliates Society of Plastics Industry
OSHA Permissible Exposure Limit (PEL): In August 2010, OSHA announced it plans to conduct a comprehensive review of chemicals that should be subject to PELs.	American Iron and Steel Institute Metal Treating Institute
OSHA Policy Change to Penalty Structure: OSHA is currently implementing multiple changes to its administrative penalty calculation system that will impact final penalties issued to employers for OSHA violations.	Associated General Contractors
OSHA Safety Signs: Current safety sign regulations are based on outdated standards.	National Electrical Manufacturers Association
OSHA Severe Violator Enforcement Program (SVEP): In June 2010, OSHA established enforcement policies and procedures for the SVEP to replace OSHA's Enhanced Enforcement Program (EEP).	Non-Ferrous Founders' Society

DEPARTMENT OF TRANSPORTATION	
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**
Hours of Service 75 Fed. Reg. 82170 (proposed Dec. 29, 2010) (to be codified at 49 C.F.R. pt. 385, 386, 390, 395): The Hours-of-Service regulations put limits in place for when and how long commercial motor vehicle (CMV) drivers may drive.	American Bakers Association Grocery Manufacturers Association Metal Treating Institute National Association of Manufacturers
DOT Proposed Rule on Transportation of Lithium Batteries 75 Fed. Reg. 1302 (proposed Jan. 11, 2010) (to be codified at 49 C.F.R. pt. 172, 173, 175): Unless excepted by specific provisions, Lithium batteries must be approved for commercial transportation by PHMSA's Associate Administrator for Hazardous Materials Safety.	Air Transport Association CTIA-The Wireless Association National Association of Manufacturers Metal Treating Institute National Electric Manufacturers Association
Cargo Capacity Labeling Rule or Part 571.110: Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less 49 C.R.F. §571.110 (2003): This standard specifies requirements for tire selection to prevent tire overloading and for motor home/recreation vehicle trailer load carrying capacity information.	National Automobile Dealers Association
FAA: Flightcrew Member Duty and Rest Requirements, 75 Fed. Reg. 63424 (proposed Oct. 15, 2010) (to be codified at 14 C.F.R. pt. 117, 121): Imposes duty-time limitations and rest requirements for Part 121 carriers. The proposal would limit the daily flight-duty period to 13 hours, which could slide to nine hours at night (depending on takeoff time and number of segments scheduled). Current rules allow for a 16-hour duty period between rest periods. The proposed rule defines "flight duty" as the period of time when a pilot reports for duty with the intention of flying an aircraft, operating a simulator or operating a flight-training device. A pilot's entire duty period can include both "flight duty" and other tasks that do not involve flight time, such as record keeping and ground training.	Air Transport Association
Hazardous Materials Transportation Special Permit Program, 76 Fed. Reg. 454 (proposed Jan. 5, 2011) (to be codified at 49 C.F.R. pt. 105, 106, 171): The Pipeline and Hazardous Materials Safety Administration is revising its procedures for applying for a special permit to require an applicant to provide sufficient information about its operations to enable the agency to evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit. In addition, PHMSA is providing an on-line application option.	Agricultural Retailers Association Motor and Equipment Manufacturers Association

Hours of Service; Limited Exemption for the Distribution of Anhydrous Ammonia in Agricultural Operations, 75 Fed. Reg. 40765 (proposed July 14, 2010) (to be codified at 49 C.F.R. pt. 395): This proposal grants a 2-year, limited exemption from the Federal hours-of-service regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point. This exemption would extend the agricultural operations exemption established by section 345 of the National Highway System Designation Act of 1995, as amended, by the sections 4115 and 4130 of the Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA-LU) to certain drivers and motor carriers engaged in the distribution of anhydrous ammonia during the planting and harvesting seasons, as defined by the States in which the carriers and drivers operate.	Agricultural Retailers Association

MISCELLANEOUS

CONSUMER PRODUCT SAFETY COMMISSION	
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**
Consumer Product Safety Improvement Act of 2008, Pub. L. No. 110-314: specifying lead levels in children's products	Manufacturing Jewelers & Suppliers of America
	Motorcycle Industry Council
	National Council of Textile Organizations
Testing and Labeling Pertaining to Product Certification, 75 Fed. Reg. 28336 (proposed May 20, 2010) (to be codified at16 C.F.R. pt. 1107): On May 20, 2010, CPSC proposed a rule that would establish requirements for a reasonable testing program and for compliance and continuing testing for children's products.	International Sleep Products Association

DEPARTMENT OF AGRICULTURE	
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**
"Buy America" Policy	Bumble Bee Foods, LLC
Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008 (Proposed) 75 Fed. Reg. 44163 (proposed July 28, 2010) (to be codified at 9 C.F.R. pt. 201): The Department of Agriculture (USDA), Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to add several new sections to the regulations under the Packers and Stockyards Act, 1921, as amended and supplemented (PS Act).	American Meat Institute
Plant Protection Act (PPA) of 2000 as part of the Agricultural Risk Protection Act: The PPA consolidates all or part of 10 existing USDA plant health laws into one comprehensive law, including the authority to regulate plants, plant products, certain biological control organisms, noxious weeds, and plant pests.	Biotechnology Industry Organization
U.S. Sugar Program	American Bakers Association

DEPARTMENT OF ENERGY	
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**
National Environmental Policy Act Implementing Procedures (Proposed) 76 Fed. Reg. 214 (proposed Jan. 3, 2011) (to be codified at 10 C.F.R. pt. 1021): The U.S. Department of Energy proposes to amend its existing regulations governing compliance with the National Environmental Policy Act (NEPA). The majority of the changes are proposed for the categorical exclusions provisions contained in its NEPA Implementing Procedures, with a small number of related changes proposed for other provisions.	Plumbing Manufacturers Institute

DEPARTMENT OF HEALTH AND HUMAN SERVICES	
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**
Accounting of Disclosures: Health Information Technology for Economic and Clinical Health (HITECH) Act	National Association of Chain Drug Stores
Centers for Medicare and Medicaid (CMS): Health IT Interim Final Rule	American Express
	Business Roundtable
Centers for Medicare and Medicaid (CMS): Medicare Provider Enrollment, Chain and Ownership System	National Association of Chain Drug Stores
Centers for Medicare and Medicaid (CMS): Durable Medical Equipment and Supplies Competitive Bidding	National Association of Chain Drug Stores
Centers for Medicare and Medicaid (CMS): Medicare/Medicaid Recovery Audit Contractor (RAC) Program	American Hospital Association
Centers for Medicare and Medicaid (CMS): Clinical Laboratory Signature on Requisition	American Hospital Association
Centers for Medicare and Medicaid (CMS): Retiree Drug Subsidy under Patient Protection and Affordable Care Act (PPACA)	American Express
	Business Roundtable
The Civil Money Penalty Law	American Hospital Association
Employer Mandate: Patient Protection and Affordable Care Act (PPACA)	American Express
	Business Roundtable
	Small Business & Entrepreneurship Council
The Ethics in Patient Referrals Act (The Stark Law): administered jointly with the Department of Justice	American Hospital Association
Grandfathering Rule: Patient Protection and Affordable Care Act (PPACA)	American Express
	Business Roundtable
	Small Business & Entrepreneurship Council

Medical Loss Ratio Rule: Patient Protection and Affordable Care Act (PPACA)	American Express
	Business Roundtable
	Small Business & Entrepreneurship Council
Regulation Abolishing "Mini-Medical" Plans: Patient Protection and Affordable Care Act (PPACA)	American Express
	Business Roundtable
	Small Business & Entrepreneurship Council

DEPARTMENT OF HOMELAND SECURITY	
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**
Aircraft Repair Station Security, 74 Fed. Reg. 59874) (proposed Nov. 18, 2009) (to be codified at 49 C.F.R. pts. 1520 and 1554): Transportation Security Administration (TSA) is proposing a rule to codify the scope of its existing inspection program and to require regulated parties to allow TSA and Department of Homeland Security (DHS) officials to enter, inspect, and test property, facilities, and records relevant to repair stations. The proposed regulations also provide procedures for TSA to notify repair stations of any deficiencies in their security programs, and to determine whether a particular repair station presents an immediate risk to security.	Aircraft Owners and Pilots Association
Maryland Three Airports: Enhanced Security Procedures at Certain Airports in the Washington, D.C., Area, 49 C.F.R. § 1562: TSA published an interim final rule (IFR) on February 10, 2005 (70 FR 7150), codified and transferred responsibility from the Federal Aviation Administration (FAA) to TSA for ground security requirements and procedures at three Maryland airports that are located within the Washington, DC, Metropolitan Area Flight Restricted Zone (Maryland Three Airports), and for individuals operating aircraft to or from these three airports.	Aircraft Owners and Pilots Association

FEDERAL COMMUNICATIONS COMMISSION	
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**
Empowering Consumers to Avoid Bill Shock Consumer Information and Disclosure (FCC 10-180): The Federal Communications Commission proposes rules that would require mobile service providers to provide usage alerts and information that will assist consumers in avoiding unexpected charges on their bills.	CTIA--The Wireless Association

FFC Form 355: television broadcasters must prepare each calendar quarter a new disclosure form and to place the form in their public inspection files.	National Association of Broadcasters
National Broadband Plan: As directed by Congress, the FCC developed a plan to concerning access to broadband capability.	Edison Electric Institute

FEDERAL RAILROAD ADMINISTRATION	
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**
Railroad Safety Enhancement Act of 2008, Pub. L. No. 110-432: Rail Safety Improvement Act of 2008 - (Sec. 3) Authorizes appropriations for FY2009-FY2013 for: (1) railroad safety; (2) the purchase of Gage Restraint Measurement System vehicles and track geometry vehicles or other comparable technology to assess track safety; and (3) construction of the Facility for Underground Rail Station and Tunnel at the Transportation Technology Center, Inc., in Pueblo, Colorado.	Association of American Railroads

INTERNAL REVENUE SERVICE	
REGULATION/STATUTES/POLICIES	**ORGANIZATION/BUSINESS**
1099 Reporting Mandate: Patient Protection and Affordable Care Act (PPACA)	American Bakers Association
	American Express
	Associated Builders and Contractors
	Business Roundtable
	Manufacturing Jewelers & Suppliers of America
	National Community Pharmacists Association
	Small Business & Entrepreneurship Council
Cadillac Tax: Patient Protection and Affordable Care Act (PPACA)	American Express
	Business Roundtable
3% Withholding Mandate: Tax Increase Prevention and Reconciliation Act of 2005	Aerospace Industries Association
	Associated Builders and Contractors
	Computing Technology Industry Association
	Government Withholding Relief Coalition
	National Asphalt Pavement Association
	Small Business & Entrepreneurship Council
Interpretation of Section 199 of the Internal Revenue Code	Institute of Scrap Recycling Industries
Deduction and Capitalization of Expenditures Related to Tangible Property	Textile Rental Services Association

Chairman ISSA. I now recognize one of our two chairmen of this committee present here today, Mr. Burton of Indiana.

Mr. BURTON. Thank you, Mr. Chairman. First of all, I would like to just briefly respond to my good friend from Baltimore, for whom I have great respect.

There is no question that we must have some regulation, because we do have tragedies that occur because we haven't really paid enough attention to them. But the other side of that coin is, we must be competitive if we are going to get market share in the world. Right now our trade deficit is huge, and one of the reasons that we have such a huge deficit trade deficit is in many areas we cannot be competitive because regulation is strangling the private sector. So we have to be very careful, when we regulate something, that we don't put ourselves in a noncompetitive situation, while at the same time being concerned about the people that are in the work force.

One of the things that concerns me is something that may come down the road. We have been watching in Egypt and the Middle East the problems over there, and we know that could explode into a situation where the Persian Gulf and the Suez Canal might, might, down the road, be blocked, and we get about 30 percent of our energy from there. We get about 20 percent of our energy from Venezuela or thereabouts. So we are dependent on foreign energy.

In the last session of Congress, we blocked the cap-and-trade regulation, and we did that because we felt it would put us in an uncompetitive situation. I would like to get your opinion about this because right now we understand the Department of Energy and the Environmental Protection Agencies are talking about passing a regulation which would parallel the cap-and-trade that did not pass the last session of Congress. In other words, they are going to try to circumvent the Congress of the United States and put this into effect.

So I would like to know, based upon your experience with regulation, what would that do to the private sector and production in this country, and how would it affect our competition worldwide. Any one of you can answer. Yes, sir.

Mr. ALFORD. I will start off with that. It would transfer private industry to overseas. We would see a mass exodus of firms going abroad because it costs too much to do business in the United States. There would also be a transfer of wealth going from the United States elsewhere. There is a national security problem with this, too, in that the United States, which is No. 1 in the world today, would probably fall to No. 5, 6, 7, or 8. If we fall to No. 8, then we create more enemies who see us as being vulnerable. This is cap-and-trade coming through the back door. We defeated it already; the American people don't want it, and we need to check EPA.

Mr. BURTON. I talked to one of my companies that manufactures and does a lot of business overseas, and they told me that if cap-and-trade passed, the electric bill, the energy they need to generate their product, would go up $100,000 a month.

Mr. Fredrich, you do business in other countries. How would this affect your company if we had to add the cost of cap-and-trade to your business?

Mr. FREDRICH. We have a situation in Manitowoc where the city, the city of Manitowoc owns the public utility, and they actually generate power; they have a power plant and they use coal to fire the boilers. Our monthly electric bill is about between $22,000 and $25,000. Without question, we are pushing $30,000 if something like that happens; it would be like $10,000 a month, $120,000 a year for what? For what? We would buy the same amount of electricity; we produce the same product. It is just now we have another burden of $120,000.

Mr. BURTON. What would that do to your competitive situation? You mentioned Mexico a while ago and you were within a few cents of getting a contract. What would that do to business like that you would get?

Mr. FREDRICH. It kills you. It kills you, because we cannot compete on wages, nor do we want to compete on wages. But we can compete on efficiency and the productive use of capital. And the projects that we bid on are so tight, 1 and 2 percent, so to the extent that we are 2 percent off, we don't get the business.

Mr. BURTON. Let me just end up, Mr. Chairman, by saying that the gentleman, Mr. Fredrich, just mentioned a while ago that the health care bill would cut his employment from 60 to 49. So you are looking at maybe a 10, 12, 14 percent reduction in employment if the health care bill goes into effect, so I think that is another thing that we ought to throw into this regulatory mix and issue.

Chairman ISSA. I thank the gentleman.

We now recognize the other chairman of this committee, Mr. Towns.

Mr. TOWNS. Thank you very much. Let me thank you, Mr. Chairman, of course, and the ranking member for having this hearing.

Let me just sort of go down the line. When agencies propose new regulations, there is a public comment period. Just go down the line. I want to know whether or not you participated in that comment period. Starting with you, Mr. Timmons, and just go right down the line.

Mr. TIMMONS. Sure. Thank you, Congressman. Yes, we often participate in the comment period, and not just as an association, but our members oftentimes provide comments as well.

Mr. TOWNS. Was there a response? Did they respond back to you?

Mr. TIMMONS. It depends on the agency.

Mr. TOWNS. Depends on the agency?

Mr. TIMMONS. Sure. Sometimes the comment period is so truncated that there really isn't enough time for meaningful dialog or for response. Oftentimes the comment period is about 60 days, and because of the massive amount of comments they receive, it is hard for them to respond to all of the input that they receive.

Mr. TOWNS. Mr. Nassif.

Mr. NASSIF. As far as agriculture is concerned, we try to respond to any proposed regulations rulemaking that goes out on any matter that is related to agriculture, and sometimes those are just that are related to business as a whole. We have generally gotten very good responses from the Department of Agriculture in this way, but a lot of the agencies have not been responsive or limited in their response.

The problem is that the comments we make are, in most cases, not included in the final draft of the regulations, and we have to go up and argue specifically because most of the time agriculture is forgotten when we are making regulations, just like health care. No one even considered it, agriculture, the fact that we have a temporary migrant work force, in promulgating health care legislation. So we have to fight very hard to be heard on those matters.

Mr. TOWNS. Mr. Alford.

Mr. ALFORD. Probably we have done 40 comments in the last year, mainly to the SBA, FCC, Department of Interior, EPA. I can't recall ever getting any feedback from any of them.

Mr. TOWNS. So you feel that basically whatever your comments are are totally ignored?

Mr. ALFORD. I don't think they are ignored.

Mr. TOWNS. What do you think?

Mr. ALFORD. They talk about it and move on. Their mind is set, basically.

Mr. TOWNS. OK.

Mr. ALFORD. You know, comments that differ from their opinion are rarely effective or make a difference. But we do comment.

Mr. TOWNS. Mr. Fredrich.

Mr. FREDRICH. I am actually too busy to keep track of that stuff. I really am. Fortunately, we have other entities like SBE Council, and if something comes up that they think will affect a manufacturer, they will always call and say, Mike, you are on the front line of the free market system, what is this going to do to you, and I will give them an answer. So I always comment.

Mr. TOWNS. You feel that it makes a difference, whether you do or don't?

Mr. FREDRICH. Yes, I think it does. That is why I am here today. I paid out of my own pocket to be in front of the committee, and I absolutely do think it makes a difference.

Mr. TOWNS. Mr. Buschur.

Mr. BUSCHUR. I am kind of in the same boat. As small as we are, I don't have the time or resources to followup on all those types of things, but I do comment on a regular basis back to our trade organizations, such as the NFIB or the Associated Builders and Contractors or the chambers, any time these issues come up and they pose something in front of us. And I have full confidence in those organizations that they do bring the message back to the proper chambers and followup with those types of issues.

Mr. TOWNS. Let me ask you this before my time runs out. Are there any areas that you feel that we should really push in terms of regulations? Yes, Mr. Fredrich. And be brief, because I am running out of time.

Mr. FREDRICH. I will be very brief. Tort reform. It is a burden on every producing company in this country and it is skimming wealth.

Mr. TOWNS. Mr. Buschur.

Mr. BUSCHUR. Project labor agreements.

Mr. TOWNS. Project labor. OK.

Mr. Alford.

Mr. ALFORD. I agree with both those answers. They are equally important.

Mr. TOWNS. Mr. Nassif.

Mr. NASSIF. I would say making sure that regulations are——

Mr. TOWNS. I am sorry, I am having trouble hearing you. Push your button.

Mr. NASSIF. I would say that making sure that the regulatory process engages good sound science and peer review and engages the stakeholders in these conversations so they understand the real world side of business.

Mr. TOWNS. Thank you.

Mr. Timmons.

Mr. TIMMONS. Mr. Towns, I would echo all of those statements and say that there are a number of regulations that need to have some very thorough review to make sure that they do apply sound science principles.

I did want to get back to your first question, though, because I think there is an example of how the process has worked, at least from our vantage point, and that is the OSHA noise proposal that I mentioned earlier. There were a number of employer comments that came back and OSHA did withdraw that proposal because, frankly, it didn't make sense. That said, the fact that the proposal was promulgated in the first place gives us pause, so we are interested, obviously, in how the regulatory process is undertaken at various levels of agencies. So I did want to comment that it sometimes does work when comments are made and when there is a large outcry from the employer community.

Mr. TOWNS. Thank you very much.

Mr. Chairman, as I yield back, I am very interested in creating jobs. My area has high unemployment. But I am also concerned about throwing the baby out with the bath water. I am concerned about that too. So I yield back.

Chairman ISSA. I thank the gentleman.

We now recognize the gentleman from Arizona, Mr. Gosar, for 5 minutes.

Mr. GOSAR. Gentlemen, coming from an area in Arizona that has huge unemployment needs from Native Americans all the way through the private sector, let me ask you the question. Of all the regulatory burdens and agencies, which one is least based on sound science?

Mr. TIMMONS. Well, I will start. I am not sure that I want to handicap that, Congressman, but I will say that because the EPA is promulgating probably more regulations than any other agency impacting manufacturers, we find ourselves contesting a lot of the measurements that are used as they draft their regulations. So that is the one agency that I think we find ourselves trying to monitor the most closely.

Mr. NASSIF. For agriculture, I would say, in addition to the EPA, that it is really the Department of the Interior and how they enforce things like defining the Endangered Species Act. We find, as I testified, that in many cases they come up with their own scientific results, which, when they are challenged by peer review or when they are challenged in court, they are found to be based on poor science, and they need to redo the science. So I think what happens is they develop a certain intellectual bias toward a certain position. For example, if they work in there, perhaps they are more

biased toward wildlife than they are toward the economy or the human environment. And that is where we run into problems, because we don't have that blend of interests.

Mr. ALFORD. I would say the EPA. We have been engaged with the EPA on issues since 1996 and we have gone from global warming, then the winters came and the hurricanes came back; now it is climate change. But it is the same dog and pony show. Senator Inhofe is going to put out a book called The Hoax, and I am anxiously awaiting its release.

Mr. FREDRICH. EPA, without question. Two examples. Wind farms. Wind farms are an absolute example of 21st century silliness. And ethanol. Ethanol. In coming from Wisconsin, we have lots of farms. Why we produce corn to convert into ethanol, which reduces gas mileage on automobiles, I will never understand.

Mr. BUSCHUR. I also would agree the EPA. I can't say I am directly affected. The industry we work for, the customers we have are directly affected and, therefore, it does hold them back from expanding or moving forward with projects that they would like to add to their business base simply because of unreasonable and unachievable regulations.

Mr. GOSAR. Second question. How much time do you spend in trying to adhere to the regulatory burden in your businesses?

Mr. TIMMONS. Well, we have 11,000 members, Congressman, and I can't give you an average, but it could be anywhere from hours to days. And I would defer to some of the individuals who are running companies directly.

Mr. NASSIF. I would say that at least 10 percent or more of the time is spent just trying to comply with the regulatory burdens, because that is about the cost of complying with them.

Mr. ALFORD. It is a big trouble. Ninety-eight percent of our members are very small businesses with limited accounting and legal support, and many times they get fined and get in trouble for being late or inaccurate with their reporting.

Mr. FREDRICH. I will give you a real life example: EEOC complaints. We had two of them. One was from a Hispanic woman who claimed that we terminated her because she was Hispanic, and another one was from a white male who claimed we terminated him because he wasn't an American. Now, each of those two cases, both of which were not valid and we ended up winning, took at least 1 week of my time, my personal time, to just complete a response to those and getting all the information and responding to the EEOC and their documentation requests. And for the price of a 44 cent stamp you can file one of those and we have to respond to it.

Mr. BUSCHUR. I would say in my business we are probably looking at at least 20 percent. But, most importantly, these regulations are so in-depth and so large that we have to pay outsiders, whether it is attorneys or business organizations or what, to really critique these regulations and advise us as to what we can and what we cannot do, and that takes money away from my company being able to expand or hire additional people; I am spending it on the attorneys or business groups helping us trying to understand the regulations.

Chairman ISSA. I thank the gentleman.

We now go to the gentlelady from New York, Mrs. Maloney, for her questions. You are recognized for 5 minutes.

Mrs. MALONEY. Thank you very much, and I thank all the panelists for coming and your testimony. I would like to direct my questions to Mr. Timmons.

In your written report, on page 13, you express concerns about the Consumer Product Safety Commission's product safety information data base, and I would just like to add that this data base will provide public access to critically important information for consumer safety, and my hope is that this committee will review this regulation and listen to Mr. Timmons' concerns and input.

However, before we can go forward, we really need to talk about other people who should be part of this discussion, and that is the consumers that benefit from this data base, and I would like to speak about Michelle Witty, who wrote to this committee and told us about waking up one morning, on December 12, 1997, and finding her son, Tyler Jonathan, strangled to death in a drop-side crib. She said that she continued to go to stores for years and they were selling this crib and saying it was their No. 1 safety product. Then she inquired about whether or not they knew that children had died in it, and they would say of course we wouldn't sell it if we knew that children had died in this crib. Unfortunately, many other children died in this crib.

Another woman who is missing from the discussion today is Lisa Olney. Lisa's 13-month-old daughter Ellie died in a poorly constructed designed portable play yard, and she wrote to this committee and said that it took 9 months for the Consumer Product Safety Commission to release the story of her daughter's death, and she wonders how many other stories are sitting in in-boxes and not getting out to the public.

So I believe their stories are important and I ask unanimous consent to place it in the record.

Chairman ISSA. Without objection, so ordered.

[The information referred to follows:]

UC Maloney
no objection

Michele Witte
129 Commonwealth Avenue, Merrick, New York 11566
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February 8th 2011

RE: Committee on Oversight and Government Reform: Testimony for Consideration

Dear Committee Members:

When I woke up on the morning of December 12th 1997, I found my son, Tyler Jonathan, with his neck caught between the side rail and headboard of his drop side crib. Sometime after his one am bottle, a single screw became loose creating a gap wide enough to entrap his neck. When this happened, the side of his crib became a spring-loaded vice, strangling him to death instantly. The very last image I have of my precious son is that of him trapped and killed by a crib that I thought was his one and only safe haven.

For years after Tyler's death, I could walk into a store and see the same crib that strangled my Tyler on a sales floor advertised as #1 in safety. On one such occasion I asked the sales representative if that particular crib had ever caused injury or death to a child. She responded: "No, of course not. We couldn't sell it if it did" and proceeded to point to the JPMA seal of approval. This enraged me. Who is protecting the consumer? When my mother first announced that she wanted to buy a crib for her first grandchild I was so excited. We went from store to store searching for the perfect crib. My mother spent hundreds of dollars on a very pretty crib that matched the paint in my nursery and had the convenience of a side that lowered. I am not very tall. When we decided on that particular crib I falsely believed that I was making an informed decision to purchase a safe crib that looked pretty and was convenient. If I knew that the crib I purchased suffocated and strangled babies in the middle of the night I would NOT have purchased the death trap that is responsible for the death of my Tyler. Shortly after losing "My Valentine" I turned to The Danny Foundation and tried to raise awareness about the dangers of drop side cribs. A few years later I stumbled upon a review on Epinions.com. The review was of a Child Craft crib by a mother named April. Her daughter, Amaya, was also killed when hardware failed on her crib. She used Epinions to share her story. Reading about Amaya encouraged me to launch the website America's Most Unwanted. My goal was to educate parents and caregivers about unsafe child products so that we can save lives "One Story at a

Time." The website received very few "hits" and my son's story was of little interest to the media so I gave up. Until I read a story about a little boy named Bobby Cirigliano in my local newspaper. Bobby died in his drop side crib when hardware failed and he suffocated. The Ciriglianos live a few miles away from me. How I cried when I saw a photo of Bobby in his little JETS T-shirt realizing that my son's story hasn't even reached my neighbors, let alone families across America. I decided to send a letter to Bobby's parents. Bobby's parents were both shocked and horrified that other children died the same way as Tyler and Bobby. That's when I started googling. I'd find small local stories about babies killed by drop side cribs. This is what the World Wide Web told me:

1. Liam Johns, Citrus Heights, California, died 2005 in his drop side crib
2. Reese Morgan, New Iberia, Louisiana, died 2009 in his drop side crib
3. Emrys Taylor, Cedar Rapids,Iowa, died 2008 in his drop side crib
4. Courtney Sue Barr, Guevernere,NY,died 2007 in her drop side crib
5. Carter Michael Pack, Summersville, West Virginia, died 2007 in his drop side crib
6. Edward Millwood,Woodstock, Georgia, died 2006 in his drop side crib
7. Serenity Bergey, West Palm Beach,Florida, died 2007 in her drop side crib
8. Royale Arceneaux, Houston,Texas, died 2008 in his drop side crib
9. Ariele Allison, Princeton, Kentucky, died 2009 in her drop side crib

Does the CPSC know about these children? I really don't know. Although I requested (and received...thank you) copies of children killed by drop side cribs from your agency via the FOIA, names are excluded to protect a family's privacy, leaving me in a quandary. I was equally as confused when I spoke with a mom last year who lost her son in a relabeled Simplicity crib. She did not report the death to the CPSC because her father-in-law assembled the crib and she was worried that he may face legal charges if he assembled it inaccurately. I don't blame her since

manufacturers have been blaming parents for years. I, myself, was told that my son's death was my fault since I did not follow a warning, placed underneath the mattress that read "Check for loose hardware each time you use the crib." At one AM my only concerns were keeping the house quiet and dark while I warmed a bottle and changed Tyler's diaper. Give consumers like me a database on which to turn. From hair salons to car reviews to diapers to yogurt, consumers have access to reviews of products. I continue to urge my legislatures to consider proposing legislation that would require mandatory reporting laws designed to keep our babies safe from harm. I strongly believe that the CPSC needs legislatures to pass laws that require police departments, coroners and / or hospitals to report to the CPSC any death or injury of a child caused by a consumer product intended for child safety. Currently, the CPSC must rely on reports from parents or manufacturers. We must be honest. Parents are devastated after the loss of a child. Children prepare to one day bury their parents but it goes against the very simple laws of nature to bury a child. And what exactly are the repercussions of manufacturers failing to report to the CPSC? Unless and until mandatory reporting laws are in effect in this country, a public database is the only way consumers can learn from other consumers the experiences a parent has had with a product. Let us review products that hold the lives of our children in its reliability, performance and reputation. The database can help consumers keep babies safe "One Story at a Time." Priceless.

Thank you for reading,

Michele Witte

February 9, 2011

Dear Chairman Issa and Members of the Committee,

I am deeply concerned that the CPSC mandated database, part of the CPSIA, is yet again in danger as the National Association of Manufacturers, and other organizations, try to suppress this life-saving database. CPSC's product safety database is an essential part of keeping our children safe by making consumer experience with products accessible to ***ALL***.

On December 19, 2002, my 13-month-old daughter, Elizabeth (Ellie), died in a poorly and dangerously designed play yard. I live my life often looking back through "what if's" and "should have's," but I've learned to focus this anger and sadness into efforts that protect our children so that no parent ever has to suffer from what I, and others, have. There are too many of us parents whose children were injured or killed due to manufacturer carelessness and inadequate testing of their products. CPSC's database is going to protect millions of children, because it provides a place for parent and caregivers to go when considering product choices and histories, especially those products intended to benefit the comfort and safety of our children.

Since Elizabeth's death, I gave birth to a third daughter. Having been so disappointed in the things I learned about children's product safety since Ellie's accident, it is an understatement to say I was paranoid and at a loss as to how I might raise another baby, using products whose manufacturer's executives or legal teams were suppressing information essential to my child's safety.

Indeed, there is the CPSC recall list, but what about the complaints lying in the "inbox" of someone's desk, waiting to be investigated? What about those products with flaws, but only a few complaints, yet warnings never made it to the public until it resulted in a death? It took nine months for the CPSC to release Ellie's story and the warning that went with it. It wasn't even a recall; Graco only had to offer new warning labels cautioning people of the possibility and danger of entrapment. Families should have a right to know the information as soon as it becomes an issue. Not when it is too late.

The CPSC database gives parents, grandparents, families, friends, medical personnel, and even retailers, immediate and FREE information on ANY problems reported about a particular product, not just those few which rise to the surface because a child has either died or been seriously injured by the product. By that time, it's dangerously too late. As with Ellie's case, it could take months before the public sees this information.

Of course manufacturers are not going to be pleased with production of such a database because it means reports of issues and concerns with their products could show up, and that means having to spend more money on assuring the safety of their product if they want it to sell. A child is

priceless, beyond what any definition might attach itself to that word. I don't know whether Ellie was destined to be a ballerina or a professional race car driver. I also don't know what she might have looked like on her 9th birthday this past November, or what her laughter sounds like. What I do know is that her life was ripped from her too soon.

The CPSC's database demands that manufacturers hold themselves to higher standards and gives the public the chance to decide for themselves, whether a product's small glitch or major defect is worth taking a risk on and buying for their child. I cringe at the thought that a manufacturer might put enough pressure on this committee in order to divert the creation and process of this database in any way. Companies who make products for our children deserve to be held accountable and at high standards for that product at every moment. I certainly can never hide from my grief, my pain, or the permanent hole in my life that once was my toddling, smiling child. Manufacturers don't deserve the ability to hide.

Sincerely,

Lisa L. Olney (f.k.a. Davis)
14 Bellmore Dr.
Orford, NH 03777

Mrs. MALONEY. Thank you.

Mr. Timmons, my question to you is when we review this regulation and talk about it and go into further discussion on it, do you agree that testimony from consumers such as Michelle Witty and Lisa Olney should be part of the discussion? OK, thank you very much.

Mr. TIMMONS. I think those are very important points of information, Congresswoman. I have a 1-year-old daughter myself, so I am very acutely aware of——

Mrs. MALONEY. Thank you. Thank you.

Mr. TIMMONS [continuing]. Some of these issues, and I think it is important. We support the data base. We just want to make sure it is done in a——

Mrs. MALONEY. Thank you. Thank you. And I also would like to place in the record testimony from the Kids in Danger. This is a not-for-profit dedicated to protecting children from faulty consumer products. It was founded by parents who found their son dead in a portable crib, and they want to work to get the information out.

I relay these stories because these regulations affect real people and has real significant benefits in protecting consumers and people in our society that cannot be measured by merely a cost profit side or a tally sheet. It is there to protect people and it should be part of the discussion and part of the decisions.

These mothers, Mr. Chairman, and these families deserve an investigation and consideration that looks at both the costs and the benefits of these regulations, and many of these regulations, such as the Consumer Product Safety Commission's data base, are there to inform constituents, inform consumers, and really make our country safer for our children. So I wanted to make sure that was part of the discussion. I thank you.

Mr. TIMMONS. Thank you, Congresswoman. Clearly, we support product safety; it is very important for the brand reputation of our manufacturers. We have supported additional resources for the CPSC and we look forward to working on a data base that makes sense for all concerned.

Mrs. MALONEY. Thank you.

Chairman ISSA. The gentleman from Pennsylvania, Mr. Meehan, is recognized for 5 minutes.

Mr. MEEHAN. Thank you, Mr. Chairman.

Mr. Timmons, let me ask you a question right from the outset, please. The President issued regulations from the administration stressing the importance of giving 60 days notice and comment. We have heard some questions about this issue and we have heard a lot about EPA. What has your experience been with EPA's abiding by that regulation, that request?

Mr. TIMMONS. Sixty days oftentimes is not adequate, first and foremost. But the experience of manufacturers with the EPA has not been a particularly harmonious one and, in all candor, it hasn't just occurred in this administration; the last administration was very difficult to have meaningful conversations with. I was chief of staff of a State government in the 1990's, and one of the things that we attempted to do was to have a collaborative relationship with our regulating agencies, our environmental permitting and regulating agency, with the business community because we all

agreed that we wanted cleaner air and cleaner water, and we found that the best way to achieve that was to work together to achieve those goals.

Now, it didn't always work and sometimes businesses had issues that could not be resolved in a collaborative way, but we did find that, when we worked together, we were able to resolve issues quickly and achieve goals that did not harm the economic competitiveness of our State, and we would like to see that be the case with EPA. We are happy to see the President's regulatory Executive order. It doesn't apply, necessarily, to the EPA, but we think it is a step in the right direction.

Mr. MEEHAN. Well, if you could help me, to the extent that you can, by asking some of your constituencies to give us a record on that, because I know the issue arose today, and in preparation for this I have a letter from Charles Drevna, who is the president of the National Petroleum and Refiners Association, and I am quoting his language: In relation to chemicals regulation, there has been little transparency into the regulatory process in the EPA in recent years. For example, EPA no longer holds public meetings when crafting regulations. In the past they routinely held public meetings.

So I know this is an issue. I have two refineries, 2,000 direct jobs in my backyard. We keep talking about sending jobs overseas. We are competing with refineries overseas, and it is cheaper for them to send oil refined from Nigeria into my backyard than it is for my refineries to do that, and those 2,000 jobs are teetering on the line by virtue of these EPA policies.

As I have talked to the folks down here, we are getting so many mixed messages. One, you talked about working together. They are giving regulations for greenhouse gases but vague guidelines. You talked about BACT, which is the best available control technology. They are delaying any kind of interpretation on this and then opening the company to the extent that they put in something that could be litigated later; that it wasn't the best available technology and it will require the company not only just to litigate this, but they can lose the benefit of the investment that they have already made.

Mr. TIMMONS. Well, that is an example of a regulatory process that really doesn't make sense, and one of the things that we have advocated as the National Association of Manufacturers is that, as I mentioned before, it is 18 percent more expensive to do business here in the United States. Part of the reason for that is our regulatory burden. And we believe that our goal and the goal of policymakers should be that this is the best country in the world in which to headquarter a corporation, that it is the best country in the world in which to practice research and development, and that we need to be, obviously, the best country in the world in which to manufacture so that we can export our products.

The only way to do that is to have lower costs for manufacturers, including regulatory burdens, and common sense regulatory processes that don't have manufacturers saying it doesn't make sense to do business in this country anymore.

I know that Boeing is one of your constituents as well, Congressman, and every day they have to spend a tremendous amount of

their resources trying to ensure that they comply with regulations and they spend an enormous amount of resources in doing that.

Mr. MEEHAN. You used the language common sense——

Mr. TIMMONS. Yes.

Mr. MEEHAN [continuing]. And it is something that we all care about——

Mr. TIMMONS. We do.

Mr. MEEHAN [continuing]. Quality, to be sure; we need to focus on it. But CAA regulations right now, in my very refineries, are requiring the facilities to install advanced technologies. But by virtue of doing that they are going to use more energy than they currently do for the process, then they are going to be penalized for the greenhouse gas that is associated with the very technologies that they are being required to put in by the EPA. Where is the common sense in that process that the result of that means that those jobs are going to be competing with the Nigerian oil that doesn't have the same requirement that is going to take that market away from the workers in my district?

Mr. TIMMONS. Yes. I don't think you would see me defending that as a common sense move.

Mr. MEEHAN. May I just ask one last question, Mr. Chairman? Winners and losers. They have picked two industries when they decided EPA——

Mr. TIMMONS. So far.

Mr. MEEHAN [continuing]. Refineries, when they were required to do the new source performance standards. How can agencies pick winners and losers in the private market with regard to which regulations——

Chairman ISSA. The gentleman can answer briefly.

Mr. TIMMONS. Well, I think the bottom line, Congressman, is they shouldn't, and the free market should be allowed to determine who is going to succeed in our economy, and by so doing I think we will end up creating long-term economic growth.

Chairman ISSA. Thank you.

The gentleman from Cleveland, OH, Mr. Kucinich, for 5 minutes.

Mr. KUCINICH. Thank you, Mr. Chairman.

In a recent letter in the Wall Street Journal, a group of powerful utility companies, including Pacific Gas & Electric, Exelon Corp., and Constellation Energy Group, stated that, in their experience, "regulations can yield important economic benefits, including job creation, while maintaining reliability." As we are looking for innovative ways to create more jobs, we should consider that regulations can create jobs.

According to the economist Evan Goldstein, "The one comprehensive estimate available suggests that in 1992 just under 4 million jobs were directly or indirectly related to pollution abatement and environmental protection in the United States." In addition, a report issued this week by Serius and the Political Economy Research Institute found that certain EPA rules proposed under the Clean Air Act "will lead to a net job gain" in 36 eastern States evaluated and studied. The report also finds that between 2010 and 2015 capital investments in pollution controls and new power generation will result in 1.46 million jobs.

Mr. Timmons, in your testimony you express concern about the high cost of pollution abatement. I understand that these costs are difficult for a company, especially a small one, but there are studies now that say that the ultimate effect is a net increase in jobs. Would you dispute that as a possibility?

Mr. TIMMONS. Well, I would say that when we evaluated the cap-and-trade bill from the last Congress, our study was a net study and it showed a 2 million job loss.

Mr. KUCINICH. What about these other studies? Do you dispute that these studies have any validity at all?

Mr. TIMMONS. Well, I can tell you what our study said.

Mr. KUCINICH. But what about these other studies? Do you look at any other study or do you only know your study?

Mr. TIMMONS. I haven't seen those particular studies.

Mr. KUCINICH. OK. Well, would you be interested in those studies?

Mr. TIMMONS. Send them along; I would love to see them.

Mr. KUCINICH. Good. I will.

A 2009 study conducted by the Center for American Progress found that, compared to overall spending in the economy, on a per dollar basis, spending on environmental protection and cleanup employs more than twice as many workers in construction, 11 percent versus 4 percent, and 25 percent more in manufacturing, 20 percent versus 16 percent. This year, the Bureau of Labor Statistics 2011 Employment Survey Data shows that the manufacturing sector added 49,000 jobs in January, up from 9,000 in January of last year.

I bring this up because I think it is important that we have a serious discussion about job creation while factoring in studies that are available that show that, in some cases, regulations can create jobs. And I don't think we can have a serious debate about the cost of regulations, including EPA regulations, without acknowledging their positive impact.

There is another element here that doesn't get much discussion, and that is when we are talking about the benefits of regulation and the positive effect, job-creating effects of regulation, I think if you are looking at the cost of regulations, you need to monetize the benefits of regulation, particularly with respect to public health, because if an industry is creating pollution that ruins someone's health, that, in effect, is a payment that individual person is making to that industry with their health. That is a cost shifted on to the society.

So I hope that as we get into this discussion about regulation, we take a broader view about cost-benefit, and I yield back the balance of my time. Thank you.

Chairman ISSA. I thank the gentleman.

The Chair now recognizes Mr. Gowdy for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Fredrich, how are you?

Mr. FREDRICH. Dandy.

Mr. GOWDY. If my information is correct, your company was able to come back from the brink. Can you tell us how you accomplished that; whether government was helpful or not helpful? Tell us about your odyssey back.

Mr. FREDRICH. Well, the government was helpful in putting us to the brink, but not helpful in getting us out. I dispute this whole financial regulation issue about why the financial sector crashed. I mean, it was bad loans that were made which ultimately triggered this whole thing, and that is what caused a problem for us in 2009. We were running 2 days a week, 3 days a week. Our salaried people found out what it was like to get paid for 2 days a week and not their full salary.

But it was just sheer, the ability to cut back our internal costs, and we did it on the backs of everybody, including myself. I still haven't raised my draw back to where it was in 2008 because I can't afford it. So everybody felt the pain. But it was all labor. And, really, when you want to cut something in a hurry, that is what you have to cut; there is no way around that. And what you cannot cut is what we are talking about here today, which is burden, regulatory burden. That is a fixed cost. It is so fixed that you can't even identify it to cut it.

So we did it through guts. Guts. And we didn't lose any people. The economy was so bad that we didn't have people leave and go somewhere else; there was nowhere to go. So, fortunately, we kept our core group together.

Mr. GOWDY. Well, thank you and we commend you.

Mr. Timmons, I come from a State, South Carolina, that while we have a lot of manufacturing jobs, we have lost a lot of manufacturing jobs, and particularly in the upstate of South Carolina. Can you give me some specific examples of particularly pernicious regulations that are impacting the manufacturing sector? I know about tax, I know about litigation. Help me with the regulatory side. What can we change to help create manufacturing jobs or keep the ones we have in the upstate of South Carolina?

Mr. TIMMONS. I think the most important thing we can do at this juncture is to ensure that additional regulations that are costly do not get imposed on manufacturers, because, as I have stated earlier and you have just mentioned as well, the overall cost of doing business in the United States is 18 percent more expensive than it is among our major trading partners and developed economies. That cost does not include the cost of labor because we believe that a higher standard of living is desirable. It does include, however, in addition to energy cost and tort cost, it does include regulatory costs as well.

I welcome the President's Executive order because it asks all agencies to look at the regulatory burden overall and evaluate each existing regulation's impacting on jobs and the economy, and I think that study will help us determine exactly where changes can be made. When I was in State government, one of the things that we chose to do was to evaluate, literally, each and every regulation. It was the State of Virginia and we were constantly competing against the State of South Carolina to see who could be the most competitive, and we chose to look at every regulation on the books, and 75 percent of our regulations over this 3 year period were either amended or eliminated so as to make the economic environment more conducive in Virginia for investment.

So I think the first step is this Executive order, and we will see what that produces. I have indicated several regulations that we

have concerns with in my written testimony. I would be happy to provide another copy of that, but it is a rather lengthy list, and we can also get you some specific costs.

Mr. GOWDY. I only have 30 seconds. Let me ask you more questions. My constituents are in one accord that regulations are stifling their ability to create jobs. They are about equally divided on whether or not those are unintended consequences or whether it is part of a broader scheme to get through regulatory mechanisms which you cannot get through legislative mechanisms. What is your judgment on that? Are these unintended consequences or is this getting through regulation which you can't get in elections?

Mr. TIMMONS. There are many regulations on the books that have come about through the regulatory process and not through congressional action, that is for sure. The Environmental Protection Agency has a proposal to regulate greenhouse gases. That clearly did not make it through the legislative process, and it would be an example of legislating through regulation.

Mr. GOWDY. Thank you, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

The gentleman from Chicago, Mr. Quigley.

Mr. QUIGLEY. Thank you, Mr. Chairman. Mr. Chairman, in the 112th Congress, this is now my third meeting already that I have participated in regarding regulation, and I appreciate that because regulation is important. We are starting to see themes in these meetings, though, that regulation is important, but it is a process and there is a balance involved, and I too, Mr. Chairman, agree with the President's Executive order and his movement toward a balanced approach.

I just think the tenor and tone comes across so differently across the aisle that we need to try to strike a more subtle balance. I defy anyone in this room to not think about regulation the next time they get on a commuter airliner. How much sleep did that pilot get last night? And if you come to my hometown, Chicago, I defy you not to think about regulation when you drink tap water. We have now found chromium not in the lake, but in the tap water three times what most people consider to be a healthy level. And if you don't want to think about it now or then, think about it in the morning when you have your eggs. A million cases of salmonella.

So I understand the balance you are talking about because jobs are at stake, but you have to recognize lives are at stake. The only thing I have learned in these three meetings has reinforced with me it is a complicated world now. I think people yearn for a day gone by when things weren't so complicated. But we weren't flying then; we weren't trying to go into space; we didn't have nuclear reactors; and we didn't have the chemical industry, which has many benefits. We didn't have those back then. So we are trying to strike this balance and it is a process, and it doesn't work and we are not always in agreement. And I am glad Mr. Kucinich brought out the energy companies that are in favor of the global warming, as you call it, regulations that are being discussed.

But let me just go back in history, Mr. Timmons, to point out—and I understand we all don't get it right. You recall in 1990 we passed the Clean Air Act amendments under George H.W. Bush and the National Association of Manufacturers said at the time,

"We will have, when this passes, the dubious distinction of moving the United States toward the status of a second class industrial power by the end of the century." The Business Roundtable Commission did a study on that law and said that we are going to lose at least 200,000 jobs, and perhaps as many as 2 million. Four years later, only 2,363 displaced workers, all of them coal miners, applied for aid in the belief their unemployment had been caused by the act.

Looking back on the first 10 years of the Nation's experience with the 1990 program, the agency found a total loss of 4,000 coal miner jobs. The great majority of the losses, it was concluded, were the result of mechanization and productivity increases, not regulation.

So I understand what if they had been right is important, but I at least give some benefit to those attempting to regulate, because we could also have a panel here talking about lives lost on any sort of industry as a result of not regulating appropriately.

Mr. TIMMONS. So I have been on the job 1 month, so I am hoping that you won't ask me to talk in detail about those 1990 comments. But what I can say, Congressman, is we are not disputing that regulation can be beneficial. That is not really the issue, as I see it, at hand. I think the issue is making sure that regulations make sense, making sure that they are balanced, and, frankly, making sure that regulating agencies don't overreach.

There is a cost of doing business. I have talked about the 18 percent. Some of that cost we understand is going to be necessary, but we should always have a very careful review of every regulation to any thoughtful analysis is going to include all benefits, but also all costs. So I am not sitting here saying that we should only look at cost. I can't imagine any manufacturer would say that either.

But I do think that we have to—as Members of Congress, you have so many competing demands that you have to deal with. The prism that we need to look through as an association is the prism of jobs, and creating jobs for Americans and ensuring that every American who wants a job has the ability to get a job. And the way we do that is by growing our enterprises, by investing capital into new facilities and providing more opportunities. So that is the prism that I am going to look at things through, and I am sure that there are prisms that others look through, and I want to work with those folks in making sure that we have meaningful regulations that make economic sense and that are not overly burdensome.

Mr. QUIGLEY. Toward all those ends, I look forward to working with you.

Mr. TIMMONS. Thank you.

Mr. NASSIF. If I could just make a comment on that. In many cases it is not the regulation which is so problematic; in some cases it is. But for us it is the action of the regulators in interpreting and implementing the regulations, and that is where I think we need the government oversight.

Chairman ISSA. I thank the gentleman.

The Chair recognizes the gentleman from Florida, Mr. Ross.

Mr. ROSS. Thank you, Mr. Chairman.

Mr. Timmons, as I was a kid growing up, I remember that manufacturing was the muscle that drove the American economy; that

we were No. 1 in this country producing natural resources but, more importantly, manufacturing here and doing a wonderful job at it.

My father, when I grew up, was in a tile manufacturing plant in Florida. The home base in my hometown was called Florida Tile. Florida Tile no longer exists in the State of Florida as a manufacturer, and the reason is for a myriad of reasons, whether it be regulations, whether it be taxes, whether it be the labor market. But it did have to do with exports; trying to compete globally.

And I notice that the Manufacturing Association has indicated that the export control regulations have adversely impacted manufacturing in the United States. How would you recommend that we address that and what could be done to modernize this so that we can have a balance with our export control regulations?

Mr. TIMMONS. I appreciate your story, Mr. Ross. I have a similar story. My grandfather stood in line for 6 months during the Great Depression to get a job at a manufacturing facility. He finally was offered that job because the managers there were just sick and tired of seeing him, so his persistence paid off. But his goal was the goal of manufacturers today, and that was to provide a better quality of life for his family, and he gave me many opportunities, he gave my family many opportunities that so many others didn't.

As far as export controls, our goal is to—and this is another area, by the way, where the administration has been working very cooperatively with the manufacturing sector, but there have been some bumps in the road, and it is really in terms of implementation, trying to ensure that there are not multiple lists that have to be reviewed, but one list; that there are not multiple processes or multiple permitting processes for the same product being exported, just being able to have one permit that can carry the day for the future.

So it is really more of a process question; it is not so much the goal. The goal obviously is to make sure that we have an export policy that makes sense and protects our national security, but on items that, frankly, don't have that much of a national security concern or that are being produced by other countries around the world and those countries are freely exporting that product, we really need to ensure that American businesses have the ability to export those products very quickly and without a lot of paperwork.

Mr. ROSS. Thank you.

Mr. Alford, in your opening remarks you hit on something that kind of struck a chord with me, and it had to do with gainful employment rules. When you talk about gainful employment rules, it is interesting coming from the chamber's perspective because that is something that is impacted by the Department of Education, not a traditional regulation that would impact industry. But it also impacts employers who are seeking to find educated high school laborers that cannot get their education because the government prevents them from getting funding to do that because of these gainful employment rules. Could you expand on that a little bit and tell me more of how we can change that?

Mr. ALFORD. Yes. And the funny thing is, not really funny, but the Federal Government took over Sallie Mae student loans and here we are, the Federal Government is saying we are going to deny your students student loans because the payback record in

the last few years is not as good as the students at Harvard or Ohio State and what have you. These are inner city kids, they are disadvantaged; they are broke, they are poor. Of course their credit is not going to be as pristine as an upper middle-class person would be. You should expect that. There is a risk factor. Tack on a little more interest, cover your risk.

But don't deny them the right to finance their education. Many, it is their last chance. It is their last chance. They can go get a job at one of the members of National Association of Manufacturers or they can sell cocaine. One or the other, they are going to make a living, so why not encourage them to get educated and to live a gainful life? This rule is mean and cruel. And what I really like about it, we put out an ad in the Washington Post with Reverend Jesse Jackson, who we and he don't always agree on many things, but Reverend Jesse Jackson and Congressman Alcee Hastings. It is just common sense when you look at this thing.

Mr. ROSS. I agree.

One quick question I want to ask Mr. Buschur; I have 6 seconds. In 1978 you started your business. You have maintained it for 43 years. Would you do it all over again, knowing what the regulatory environment is today?

Mr. BUSCHUR. No, sir, I would not.

Mr. ROSS. Thank you.

Mr. BUSCHUR. No, sir, I would not. I discussed it earlier.

Mr. ROSS. Thank you.

Chairman ISSA. The gentleman from Kentucky, who has been very patient, Mr. Yarmuth.

Mr. YARMUTH. Thank you, Mr. Chairman. We are very patient in Kentucky.

I will throw out a question which is somewhat rhetorical, but I would like to hear your answer. There was obviously not a lot of love lost with the EPA and this panel. Do any of you want to see the EPA eliminated? Anyone want to see the Clean Air Act repealed? OK. Just wanted to get that on the record. It shows that no one indicated either one of those.

I need to set the record straight a little bit, at least offer a different perspective on the impact of Waxman-Markey. I come from a district, Mr. Fredrich, probably more reliant on coal-generated electricity than yours. Ninety-two percent of the power in Kentucky is generated by coal; we take a lot of it out of the ground. I also happen to have in my district the consumer products division of General Electric, a large manufacturing facility, Mr. Timmons, one of your most esteemed members; two Ford manufacturing facilities; and we also are the global hub of UPS.

And during the debate on Waxman-Markey, after the bill was modified in such a way that the actual permits for emitting carbon dioxide would not cost anything, we would give them out, I went to the people at Ford, the people at GE, UPS. The people at GE were very enthusiastic about the bill, they supported it; the people at Ford were very enthusiastic about it, they supported the bill; and UPS was neutral on the bill.

I talked to the University of Louisville, city government, Jefferson County public school system, which is 100,000 students, all of them big users of electricity. Not one of them opposed the bill, they

were fine with it. Then I went to our Kentucky energy cabinet, asked them what they thought. They said "we think this bill, if enacted, will create tens of thousands of new jobs." We asked our local power company what the impact on consumers would be, and they said we believe that—and this was 2009, of course—we believe that if a consumer does nothing else, so they don't make any energy efficiencies, they don't insulate, they don't replace their light bulbs, they don't do anything, that the cost will be $15 a month per household in 2019, 10 years later, so $180 a year.

So I just wanted to get a different perspective on the impact of that legislation, because the reason EPA is acting now is because the Congress failed to act and the Supreme Court mandated that the Clean Air Act be respected. I just wanted to get that on the record.

Mr. Fredrich, you talked about and, Mr. Alford, you echoed that one of your primary priorities would be tort reform?

Mr. FREDRICH. Correct.

Mr. YARMUTH. What would you like to see us do?

Mr. FREDRICH. Loser pays. That simple.

Mr. YARMUTH. Loser pays.

Mr. Alford, is that——

Mr. ALFORD. Yes. And a good example would be Mississippi. Governor Halee Barber helped enact some anti-tort reform—not anti-tort, but tort reform in Mississippi and the result has been a big growth in business in Mississippi. Companies are moving to Mississippi.

Mr. YARMUTH. And that was a State-implemented rule and the Federal Government has never been involved in tort law in 220 years, isn't that correct, 230 years? I mean, it has always been a State matter. So you would want to see us in Congress enact a national law in that area, is that what you are saying, Mr. Fredrich?

Mr. FREDRICH. Yes.

Mr. YARMUTH. OK. And what would you do to someone who, because, obviously, when a big company, whether it is General Electric or Ford, I am sure they never do anything wrong, but large companies have access to incredible legal resources and an average citizen—we heard about babies in cribs; we know that this has happened—how would they get access to adequate legal help when they actually are damaged severely?

Mr. FREDRICH. Well, they would continue to get access if the case was valid. But right now there are cases filed that are filed only for the sake of shaking somebody down because it is cheaper to pay than to carry it through to trial.

Mr. YARMUTH. Well, it is a shame that Mr. Braley isn't here, because he would have a wonderful conversation on that score.

Just before I close my time, would you make any comment, Mr. Timmons, Mr. Alford? Has your organization or any of yours ever advocated some alternative approach to dealing with carbon emissions, or you just don't think that is a legitimate need?

Mr. TIMMONS. Well, actually, yes, we have. And I do think that the story of manufacturing is a great one, because since 1990 energy consumption by manufacturers, by the industrial sector, has only increased 1 percent. That has been achieved through efficiency measures, and those measures are some that we support. We be-

lieve, generally speaking, at the 30,000 foot level, that it makes more sense to incent the private sector to conserve and to become more energy efficient, and we think that is a more effective method of achieving our mutual goals of cleaner air and a cleaner environment than penalties are. So the brief answer to your question is yes, we do think that there are things that we can do.

Mr. YARMUTH. OK, my time is up.

Chairman ISSA. I thank the gentleman.

Mr. YARMUTH. Thank you, Mr. Chairman.

Chairman ISSA. I now recognize the gentleman from New Hampshire, Mr. Guinta, and would ask him if he would yield to me for 10 seconds.

Mr. GUINTA. Of course I would.

Chairman ISSA. I thank the gentleman.

I might note for the record that Ketam cases, the seven or 800 people who have been sued simply because they failed to remove a patent that was expired off their product that has led to those cases costing millions of dollars, that is a tort case, it is clearly Federal. We do have a big stake in tort reform.

Yield back.

Mr. GUINTA. Thank you very much, Mr. Chairman. To add to that point, I would say two things. First, in my State of New Hampshire, to show the fact that there is a bipartisan willingness to address these liability and tort issues, I would like the committee and these members to know that with regard to liability caps, New Hampshire, in a bipartisan way, passed those liability caps to ensure that we could have productive employers and job creation in the State of New Hampshire.

Second, I would note that the President of the United States, in his State of the Union Address, addressed the need for medical liability reform. I would argue that we need to expand that into having thoughtful discussions in a bipartisan way to ensure that employers in our country, small business owners in our country can be more productive.

What I am hearing today is that you want to be empowered to create more jobs, to have greater certainty for your business plans, and to pass on, maybe in your circumstance, sir, a company that you created from the ground up; and I commend that and I appreciate that, and I think that we ought to inspire that in our Nation.

I want to go back to PLAs. I know that it has been discussed quite a bit, but in New Hampshire we have a $35 million project that has been held up for over 2 years because of the PLA issue. It is a Job Corps Center. A Job Corps Center has the ability to do two things: not only employ several hundred people, but it takes up to 500 people a year in New Hampshire, who otherwise wouldn't be on the path to get a standard high school education, and give them a skill supported by some of the members of your association, who would put in high tech equipment, in this circumstance some defense-related equipment, who can then be productive members of society. I think that is important. And what is holding that up is the PLA. And I hopeful that, in working with the Department of Labor, we can address that particular issue.

So you do have support. I think the country has support. My hope is that we look at this in a more common sense way and try

to level the playing field, and I think that is the point that you were trying to make. If you want to just comment on that.

Mr. BUSCHUR. Yes. Yes, it is. I hear a lot of discussion about the safety issues and the environment and things like that, and I guess in our industry those issues are extremely important to us. I look at a project labor agreement. It does nothing with any of that; all it does is eliminate 85 percent of the work force from being able to work on those projects. And history has shown it raises the cost of the project anywhere from 18 to 22 percent, and typically that is always taxpayers' money. It is not private funds, it is the taxpayers that are footing this bill for an unreasonable regulation.

Mr. GUINTA. I would add to that municipalities. For example, for every million dollars they bond, it costs them about $100,000 a year. So if you think about a $5 to $10 million project, what that impact would be to a local taxpayer; and that is something that we should always consider.

Second, relative to OSHA, in 1970 OSHA was established for many reasons, but one of their prime objectives was to educate. This is an organization, I believe, that has moved from educating, which is, in my view, a partnership with employers, to nothing more than a gotcha agency. And I don't think anybody here at the table wants to be unsafe. I think all of you have a responsibility to be safe and I think you take that seriously. What I would like to see in the reform, regulatory-wise, OSHA be returned more to an education-based organization who can help both employer and employee for safety in the workplace.

And I would ask Mr. Timmons if you would just comment on that, please.

Mr. TIMMONS. I think you are exactly right that partnership should be paramount. If partnerships don't work, then there is the legislative process and, if necessary, the regulatory process. But when businesses and government and regulatory agencies work together for a common goal, which is to make us more competitive to create jobs, everyone ends up succeeding most of the time.

Mr. GUINTA. Thank you, sir.

Thank you, Mr. Chairman.

Chairman ISSA. I now recognize the gentlelady from California, Ms. Speier, for 5 minutes.

Ms. SPEIER. Thank you, Mr. Chairman, and thank you all for your participation in this hearing. Let me say at the outset, Mr. Chairman, that I want to join with you in scrubbing our bureaucracy of outdated regulations. Unfortunately, I don't think that we have had that opportunity here to kind of pinpoint what some of those regulations are. If you would like to provide for us in the committee those kinds of outdated regulations that may be 10, 20, 30 years old that have no relevance anymore, I am certain that many of us would like to look at it.

I would also like to add, Mr. Chairman, that the hearing title has an inbred bias: how do regulations block private sector job growth. I would have recommended that it would have been preferable to say how do regulations affect private sector job growth. And let me start by submitting for the record the Ceres report, which I ask all of you to read, which basically suggests that the EPA air pollution rules will generate 1½ million new jobs and that this group is not

some Hoboken nonprofit; it is a coalition of investors, environmental groups, and other public interest organizations, a group of 95 institutional investors and financial firms from the United States and Europe managing nearly $10 trillion in assets.

Chairman ISSA. Without objection, so ordered, with a reserve from the people of Hoboken.

Ms. SPEIER. OK.

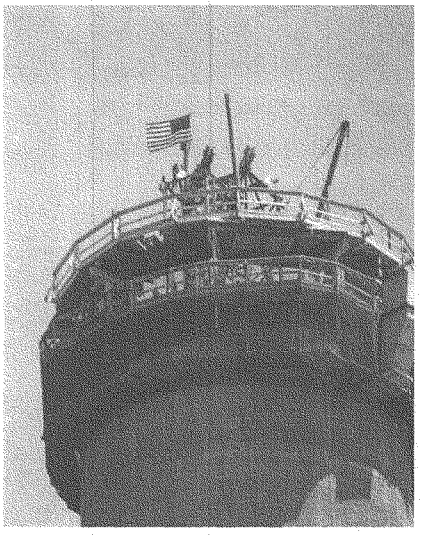
[The information referred to follows:]

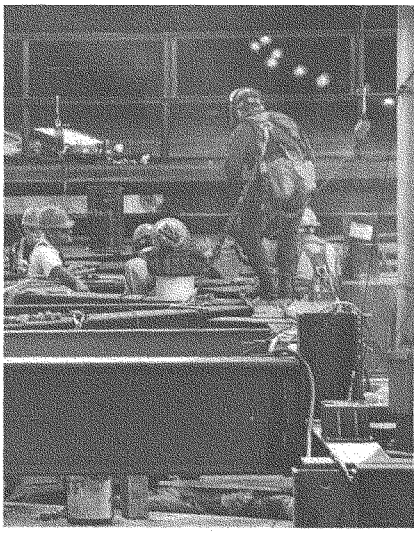
Speier UC
OK - no objet

1.5m

NEW JOBS — CLEANER AIR

Employment Effects Under Planned Changes to the EPA's Air Pollution Rules





February 2011
A Ceres Report

Ceres

PERI
University of Massachusetts Amherst

Authored by
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Ceres is a national coalition of investors, environmental groups, and other public interest organizations working with companies to address sustainability challenges such as climate change and water scarcity. Ceres directs the Investor Network on Climate Risk, a group of 95 institutional investors and financial firms from the U.S. and Europe managing nearly $10 trillion in assets.

The **Political Economy Research Institute (PERI)** is an economic policy research organization affiliated with the University of Massachusetts, Amherst. PERI conducts academic research that is directly engaged with crucial economic policy issues. PERI has broad, and intersecting, areas of specialty: macroeconomics, financial markets and globalization; labor markets (especially low-wage work, both in the U.S. and globally); economic development (with a particular focus on Africa); the economics of peace; and environmental economics.

Acknowledgments

PERI would like to acknowledge the contributions of Ying Chen who worked as a research assistant on this project.

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Smokestack with the American flag: PSNH
Workers in hard hats: PSEG

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NEW JOBS—CLEANER AIR
Employment Effects Under Planned Changes to the EPA's Air Pollution Rules

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FOREWORD

The U.S. electric power sector is changing and modernizing in response to societal and market forces. Power companies face a business imperative to meet increasing pressures for cleaner, more efficient energy that will safeguard public health and protect the world's climate.

These forces are already transforming the industry. Significant capital investment has been flowing in recent years to cleaner technologies such as renewable energy, energy efficiency and natural gas-fired generation. Investment to clean up and modernize the nation's existing fossil fuel generation fleet has already begun to contribute to a cleaner energy future.

New air pollution rules expected this year from the U.S. Environmental Protection Agency will further accelerate these trends. And – as this new Ceres report shows - they will have a major added benefit: significant job creation.

Meeting new standards that limit sulfur dioxide, nitrogen oxides, mercury and other pollutants will create, in the report's own words, "a wide array of skilled construction and professional jobs" – from the electricians, plumbers, laborers and engineers who will build and retrofit power plants all across the eastern U.S., to operation and maintenance (O&M) employees who will keep the modernized facilities running.

The report finds that investments driven by the EPA's two new air quality rules will create nearly 1.5 million jobs, or nearly 300,000 jobs a year on average over the next five years – and at a critical moment for a struggling economy. The end product will be an upgraded, cleaner American industry, along with good paying jobs and better health for the nation's most vulnerable citizens.

For this report, researchers at the University of Massachusetts' Political Economy Research Institute carefully gauged the job impacts of pending and proposed EPA rules, using independent models and conservative assumptions. Its findings are especially good news for the many states, such as Ohio, Michigan, Pennsylvania, Virginia and Missouri, that are most dependent on traditional fossil fuel energy and most worried about traditional industrial jobs losses.

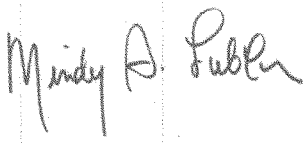
America's status as one of history's great economic powerhouses has long depended on our willingness and ability to reinvest and innovate when changing times tell us it's time to retool. We've seen throughout our history that clean technology investments – whether to clean our rivers, improve our air quality or compete in the emerging low-carbon global economy – have long-term benefits that far outweigh the upfront costs.

Since 1970, investments to comply with the Clean Air Act have provided $4 to $8 in economic benefits for every $1 spent on compliance, according to the nonpartisan Office of Management and Budget. Since the passage of the Clean Air Act Amendments in 1990, U.S. average electricity rates (real) have remained flat even as electric utilities have invested hundreds of billions of dollars to cut their air pollution emissions. During the

same period, America's overall GDP increased by 60 percent in inflation-adjusted terms. The bottom line: clean air is a worthwhile investment.

Significant change is often unsettling, never without short-term costs and some dislocation. But failing to change, especially now, offers much grimmer prospects. We are entering – in fact have already entered – a great global industrial and economic realignment toward clean energy. The greatest benefits, for both today's families and future generations, will flow to those who anticipate these changes, and take proactive steps to respond.

For our electric power sector and the workers tied to it, this report outlines why this path makes sense.



Mindy S. Lubber
President of Ceres

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EXECUTIVE SUMMARY

Clean air safeguards have benefitted the United States tremendously. Enacted in 1970, and amended in 1990, the Clean Air Act ("CAA") has delivered cleaner air, better public health, new jobs and an impressive return on investment—providing $4 to $8 in benefits for every $1 spent on compliance.[1]

History has proven that clean air and strong economic growth are mutually reinforcing. Since 1990, the CAA has reduced emissions of the most common air pollutants 41 percent while Gross Domestic Product increased 64 percent.[2] Clean air regulations have also spurred important technological innovations, such as catalytic converters, that helped make the United States a world leader in exporting environmental control technologies.

This study, prepared by the University of Massachusetts' Political Economy Research Institute (PERI), demonstrates how new air pollution rules proposed for the electric power sector by the Environmental Protection Agency ("EPA") will provide long-term economic benefits across much of the United States in the form of highly skilled, well paying jobs through infrastructure investment in the nation's generation fleet. Significantly, many of these jobs will be created over the next five years as the United States recovers from its severe economic downturn.

Focusing on 36 states[3] in the eastern half of the United States, this report evaluates the employment impacts of the electric sector's transformation to a cleaner, modern fleet through investment in pollution controls and new generation capacity and through retirement of older, less efficient generating facilities. In particular, we assess the impacts from two CAA regulations expected to be issued in 2011: the Clean Air Transport Rule ("Transport Rule") governing sulfur dioxide (SO_2) and nitrogen oxide (NOx) emissions from targeted states in the eastern half of the U.S.; and the National Emissions Standards for Hazardous Air Pollutants for Utility Boilers ("Utility MACT") rule which will, for the first time, set federal limits for hazardous air pollutants such as mercury, lead, dioxin, and arsenic. Although our analysis considers only employment-related impacts under the new air regulations, the reality is these new standards will yield numerous other concrete economic benefits, including better public health from cleaner air, increased competitiveness from developing innovative technologies and mitigation of climate change. Moreover, increased employment during this critical five year period will also benefit severely stressed state budgets through increased payroll taxes and reduced unemployment benefit costs.

1. Office of Management and Budget (OMB). Informing Regulatory Decisions: 2003 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities. Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC. 2003.

2. U.S. Environmental Protection Agency, Our Nation's Air - Status and Trends through 2008, February 2010.

3. As depicted on the map in Figure 2, the Eastern Interconnection also includes the District of Columbia and small portions of Wyoming, Montana, New Mexico, and Texas. A small portion of South Dakota is within the Western Interconnection.

To estimate the job impacts, this study used a forecast of future pollution control installations, construction of new generation capacity, and coal plant retirements from a December 2010 study prepared by two researchers at Charles River Associates ("CRA").[4] Applying stringent EPA compliance requirements, including an assumption that the Utility MACT rule will require pollution controls on all coal-fired power plants by 2015, that study projected that between 2010 and 2015 the power sector will invest almost $200 billion on capital improvements, including almost $94 billion on pollution controls and over $100 billion on about 68,000 megawatts of new generation capacity. Constructing such new capacity and installing pollution controls will create a wide array of skilled, high-paying jobs, including engineers, project managers, electricians, boilermakers, pipefitters, millwrights and iron workers.

Key findings:

- As detailed in Table ES.1 below, between 2010 and 2015, **these capital investments in pollution controls and new generation will create an estimated 1.46 million jobs or about 291,577 year-round jobs on average for each of those five years.**

Table ES.1. Aggregate Employment Estimates from Capital Improvements: Construction, Installation, and Professional Jobs (between 2010 and 2015)

	DIRECT	DIRECT + INDIRECT
Pollution controls	325,305	683,734
New generation capacity	312,617	774,151
TOTAL	637,922	1,457,885

Note: All values reported in "job-years". One job-year equals one year of full-time employment.

- As described in Table ES.2, transforming to a cleaner, modern fleet through retirement of older, less efficient plants, installation of pollution controls and construction of new capacity **will result in a net gain of over 4,254 operation and maintenance (O&M) jobs across the Eastern Interconnection**. Distribution of these O&M jobs will vary from state-to-state, depending on where coal plants are retired (O&M job reduction) and where new generation capacity is installed (O&M job gains).

4. "A Reliability Assessment of EPA's Proposed Transport Rule and Forthcoming Utility MACT", Shavel and Gibbs, CRA, December 16, 2010.

Table ES.2. Employment Estimates of Net O&M Jobs Associated with Capital Improvements and Retirement of Coal Generation

	DIRECT	DIRECT + INDIRECT
Pollution controls	7,170	14,077
New generation capacity	4,106	8,061
Retirement of coal generation	(9,109)	(17,884)
NET TOTAL	2,167	4,254

- Over the five years, investments in pollution controls and new generation capacity will create significant numbers of new jobs in each of the states within the Eastern Interconnection, more than offsetting any job reductions from projected coal plant closures.
  - The largest estimated job gains are in Illinois, (122,695), Virginia, (123,014), Tennessee, (113,138), North Carolina (76,966) and Ohio (76,240).[5]
  - In states with net O&M job reductions, projected gains in capital improvement jobs will provide enough work to fully offset the O&M job reductions.
  - The construction of pollution controls will create a significant, near-term increase in new jobs. O&M job reductions are likely to occur later in the period.

5. All values reported in "job-years". One job-year equals one year of full-time employment.

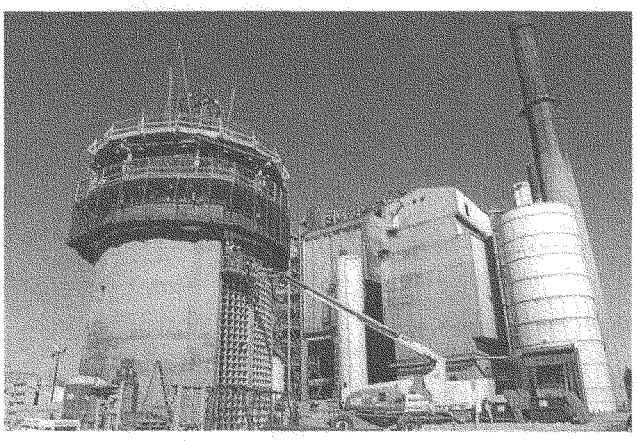
I. INTRODUCTION

The CAA and its 1990 amendments have significantly reduced power sector air pollution. In 2011, EPA plans to implement regulations that will further reduce targeted emissions. Last July, the EPA proposed the Transport Rule to introduce new standards governing SO_2 and NO_x emissions from 31 states and the District of Columbia, emissions that hinder the ability of downwind states to comply with national ambient air quality standards. In addition, EPA is required under court order to issue final Utility MACT regulations to limit electric generators' hazardous air pollutant emissions, including, for example, mercury, arsenic, chromium, nickel, lead, and hydrochloric acid.

Merrimack Station

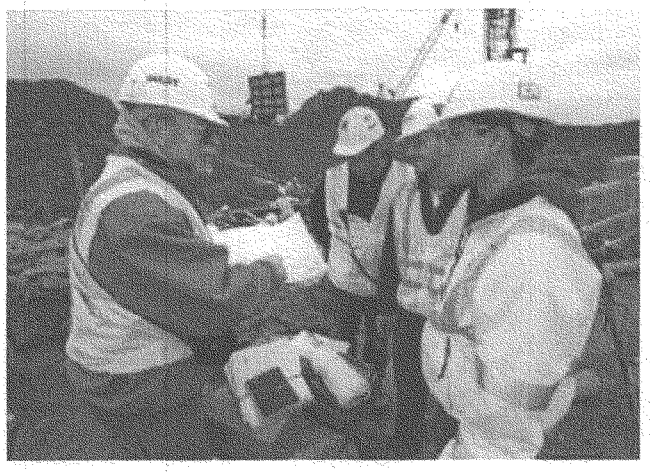
The Merrimack Station, New Hampshire's largest coal-fired power plant, constructed a scrubber to control SO_2 and mercury emissions. According to PSNH, the owner of the facility, the project provided more than 300 construction jobs for the three-year construction period.

Source: PSNH



Focusing on the Eastern and Midwestern regions of the U.S., this study evaluates the employment impacts between 2010 and 2015 of these proposed and planned changes to EPA air regulations resulting from the power sector's investment in pollution controls and new generation, and from retirement of existing coal generation. For the purposes of this analysis, the study assumes stringent compliance requirements, including an assumption that the Utility MACT rule will require scrubbers and advanced particulate controls on all coal units by 2015.[6]

6. According to a study by Dr. Ira Shavel and Mr. Barclay Gibbs of Charles River Associates, "[o]thers...believe that MACT compliance may allow lower cost and relatively inexpensive dry scrubbing options using sorbents to capture acid gases and metals (e.g., trona with activated carbon injection)." A Reliability Assessment of EPA's Proposed Transport Rule and Forthcoming Utility MACT, Shavel and Gibbs, CRA, December 16, 2010, at p. 9.



Deer Creek Station

Basin Electric began construction on the Deer Creek power plant, a 300-megawatt natural gas combined-cycle generation facility in South Dakota, in July 2010. The project will require about 350 workers at the peak of construction and 70 gas pipeline construction workers. The power plant is scheduled for commercial operation in June 2012 and will have about 30 full-time employees.

Source: Basin Electric

The modeling projections focus on the years between 2010 and 2015, as that is the period during which companies will prepare to comply with the Utility MACT and Transport rules. For purposes of this analysis, we therefore assume the expenditures are spread over these years, and limit the employment effects from these capital investments to that period.

As detailed further in Appendix B, to estimate the employment impacts associated with the projected capital spending and coal plant retirements in the 36 states analyzed, we use the IMPLAN 3.0 input-output model, which is based on data from the U.S. Commerce Department's Bureau of Economic Analysis that has been finely disaggregated by sector and state.[7] Capital investments in pollution controls and new generation capacity and coal plant retirements[8] affect employment not only in the power generation sector, but also in sectors linked to electric generation, such as engineering services, coal, natural gas, metal fabrication, construction and business services. Based on the relationships between different economic sectors in the production of goods and services, the input-output model estimates the effects on employment resulting from an increase in spending on the products and services of a given industry. For example, the model estimates the number of jobs directly created in the design, engineering, and construction industries for each $1 million spent on pollution control retrofits and the construction of new generation capacity. As we explain below, the

7. The data used to construct the IMPLAN 3.0 model is based on 2008 figures – the most up-to-date picture of the sectoral relationships in the U.S. economy currently available.

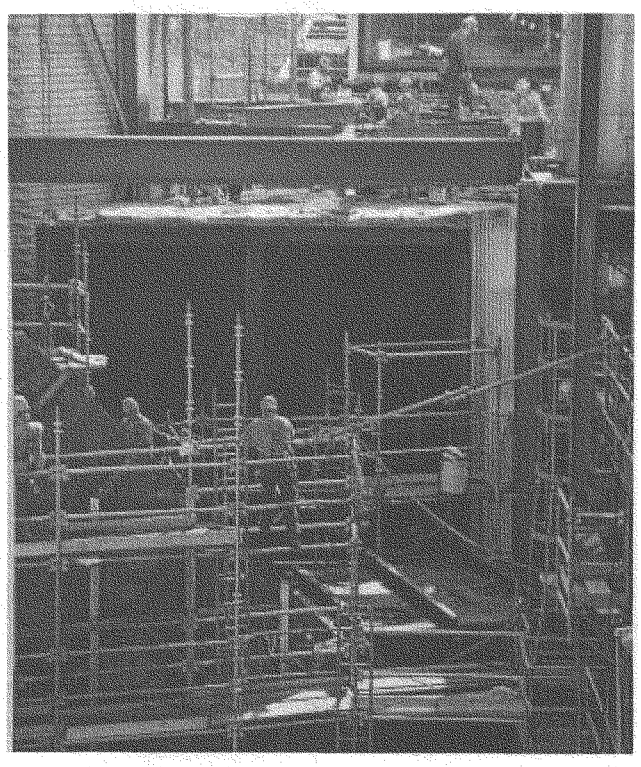
8. Notably, not all the capital investments or coal plant retirements result directly from the new EPA air regulations, as reduced electricity demand, lower sustained fuel prices resulting from recent discoveries of abundant, domestic natural gas supplies, and state renewable energy programs also influence investment and retirement decisions.

model can also estimate the jobs indirectly created in other industries through that same $1 million in spending—for example, in industries such as steel components and hardware manufacturing.

Mercer Station Pollution Control Retrofits

The Mercer station and Hudson station coal plants in New Jersey recently completed the installation of air pollution control systems. More than 1,600 construction workers were on the Mercer and Hudson facility job sites at the peak of construction.

Source: PSEG Corporation

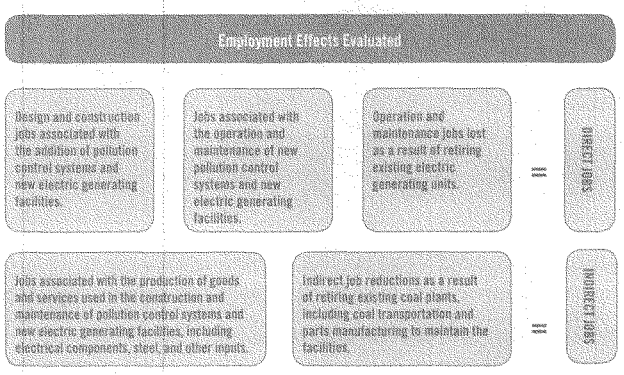


As described in Figure 1 below, our employment estimates include both direct and indirect job creation. First, it examines employment directly generated by capital investments in pollution controls and new generation capacity. Here the focus is on a wide array of skilled jobs associated with designing, procuring and installing pollution controls, and building new generation, including engineers, project managers, electricians, boilermakers, pipefitters, millwrights, iron-workers and security personnel.[9] As

9. For a more detailed discussion of occupational and skills requirements, see the National Commission on Energy Policy report, Task Force on America's Future Energy Jobs, available at www.bipartisanpolicy.org/sites/default/files/NCEP%20Task%20Force%20on%20America's%20Future%20Energy%20Jobs%20-%20Final%20Report.pdf.

these jobs are directly linked to these investment expenditures, they are created and maintained throughout the five year investment period. The direct effect represents jobs created by spending in the respective sector. For example, building new capacity involves expenditures to construct and install that capacity, including payments to new employees. Firms that install the new capacity will also have to purchase goods and services from other sectors, which in turn will create jobs in those other sectors: this "second round" of employment creation constitutes the indirect job effect.

Figure 1. Scope of Employment Analysis



Note: The income associated with both direct and indirect employment will stimulate spending on goods and services that will result in additional job creation. These induced effects are not explicitly considered in this analysis.

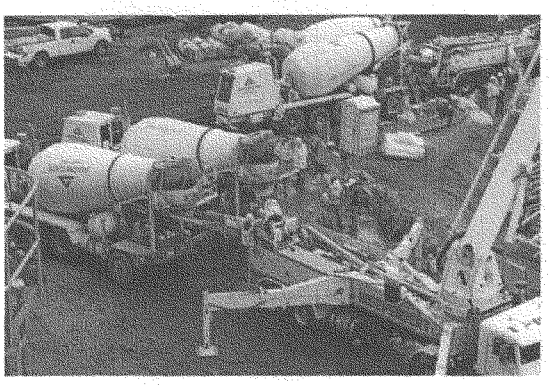
We do not explicitly consider a third source of job creation: "induced" jobs. Induced jobs are those created when individuals spend the money they earn from the direct and indirect employment. The size of the induced effects varies for a number of reasons, but will correlate with the number of direct and indirect jobs.[10] As this study calculates only the direct and indirect job impacts and excludes induced jobs, it provides a conservative estimate of the total employment impact.

10. Induced employment refers to the jobs generated when individuals in the direct and indirect jobs spend their income on goods and services. The size of the induced effects vary depending on the state of the economy. For example, if already employed individuals move from one job to another, the induced effects will be smaller (and could even be zero if there is no change in income). But if unemployed individuals move into the newly created jobs, as would be more likely given our current high unemployment rate, induced effects would likely be large.

Merrimack Station

The scrubber retrofit at PSNH's Merrimack Station includes a concrete stack that stands at more than 445 feet. Concrete for the stack was delivered around-the-clock by the Redimix Company based in New Hampshire. By mid-July, when the shell of the stack was completed, a rotating shift of six Redimix drivers had delivered an estimated 1,060 cubic yards of concrete.

Source: PSNH



The study also calculates estimated net changes in O&M jobs which, unlike construction and installation and related professional jobs, exist as long as the plants continue to generate electricity or the pollution control systems continue to operate. We project that although retiring older, less efficient capacity will lead to some O&M job reduction, installing pollution controls and building new generation will lead to a net increase in O&M jobs.

Estimating the employment impacts under EPA's air pollution regulations requires forecasts of future pollution control installations, new power plant construction and coal plant retirements. The forecasts used in this report are based on a detailed CRA modeling assessment entitled, "A Reliability Assessment of EPA's Proposed Transport Rule and Forthcoming Utility MACT," published in December 2010 by Dr. Ira Shavel and Mr. Barclay Gibbs of Charles River Associates (the "CRA Study").[11] The CRA Study used CRA's North American Electricity and Environment Model (NEEM) to estimate coal unit retirements, new capacity additions, and pollution control retrofits, taking into account the operating characteristics of existing capacity and the capital and operating costs of potential new capacity. As highlighted in Table 1 below, the CRA Study's predicted coal plant retirements are consistent with other similar assessments.

The CRA Study limited its analysis to the Eastern Interconnection where most of the nation's coal-fired generating capacity is located and where most of the capital investment associated with EPA's air pollution regulations is expected to occur. The Eastern Interconnection, one of four major power grids in the U.S. and Canada, comprises about 36 states (in part or whole) and the District of Columbia as shown in the map in Figure 2 below, accounts for much of the transmission system east of the Continental Divide[12] and contains approximately 73 percent of U.S. electricity generation. Moreover, as the Transport Rule only applies to states in the Eastern U.S., the estimated power sector changes projected below are concentrated in that part of the country.

11. Available at http://www.crai.com/Publications/listingdetails.aspx?id=13473

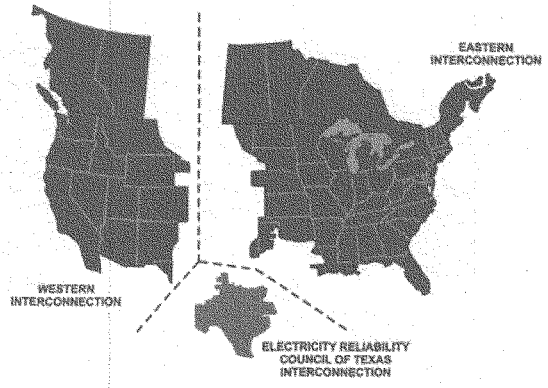
12. One notable exception is Texas, the majority of which is linked into a separate interconnected system.

Table 1. Recent Projections of Coal Plant Retirements and Power Industry Investment

	Author, Date	Projected Retirements	Notes
A Reliability Assessment of EPA's Proposed Transport Rule and Forthcoming Utility MACT	Shavel and Gibbs, Charles River Associates, December 2010	35 GW of coal plant retirements by 2015 (Eastern Interconnection)	Models utility MACT and Transport Rule
Potential Coal Plant Retirements Under Emerging Environmental Regulations	The Brattle Group, December 2010	28-39 GW of coal retirements by 2020 (Eastern Interconnection)	Models utility MACT and Transport Rule (scrubbers and SCR mandate)
Integrated Energy Outlook	ICF Consulting, January 2011	60 GW of coal plant retirements by 2018 (nationwide figure)	Models utility MACT, Transport Rule, coal ash, and cooling water regulations

The CRA Study assumed stringent requirements to comply with the forthcoming Utility MACT regulations and proposed Transport Rule, including an assumption that by 2015 the Utility MACT rule will require scrubbers, activated carbon injection, and advanced particulate controls on all coal units. Furthermore, the CRA Study provided plant-level estimates of pollution control retrofits and retirements which could then be evaluated under the IMPLAN model.

Figure 2. The Eastern Interconnection and Other North American Electric System Interconnections



II. EASTERN INTERCONNECTION EMPLOYMENT IMPACTS UNDER PLANNED EPA RULES

This report calculates estimated employment effects in the Eastern Interconnection in two broad categories: (1) construction, installation and professional jobs from capital investment in pollution controls and new generation capacity; and (2) net O&M jobs directly and indirectly associated with those capital improvements and O&M job reductions from retiring older, less efficient coal capacity.

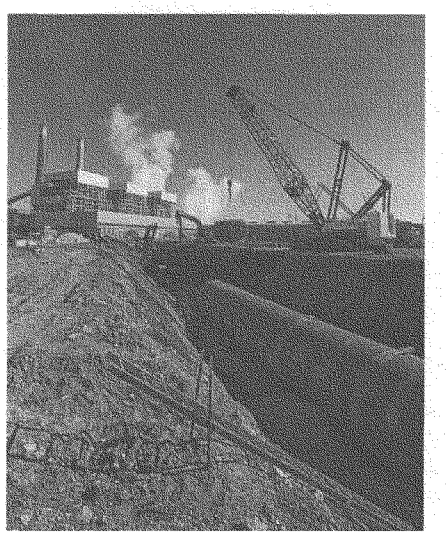
Capital Improvements Spending on Pollution Controls and New Generation Capacity

The CRA Study projects that between 2010 and 2015 the electricity power sector will spend an estimated $196 billion on capital improvements under EPA's new utility MACT and Transport rules: $93.6 billion on pollution controls and $102.4 billion on about 68,000 megawatts of new generation capacity. Expenditures on pollution controls are assumed to include four technologies: (1) activated carbon injection ("ACI") to control mercury emissions; (2) activated carbon injection with fabric filters ("ACI+") to control mercury and other hazardous air pollutant emissions; (3) flue gas desulfurization ("FGD") or "scrubbers" to control SO_2 and hazardous air pollutant emissions; and (4) selective catalytic reduction ("SCR") to control NO_x emissions.

Jeffrey Energy Center

The Jeffrey Energy Center, the largest coal-fired power plant in Kansas, upgraded the scrubbers at the facility to achieve greater than 95 percent SO_2 control. The project started in 2007 and was completed in 2009. The project required over 1,300 tons of structural steel and more than 850 construction workers were on-site at the peak of construction.

Source: Westar



Using the widely endorsed and proven IMPLAN 3.0 input-output model, we estimate the direct and indirect employment effects of substantial pollution control expenditures and resulting job impacts. In addition to investments in pollution controls, we also estimate the employment impacts of investment in new generation capacity involving nine different technologies: (1) advanced coal technologies; (2) integrated gasification combined cycle, ("IGCC") (coal); (3) combined cycle (natural gas); (4) combustion turbine (natural gas); (5) nuclear; (6) municipal waste/landfill gas; (7) biomass; (8) solar (photovoltaic); and (9) wind.

As with pollution controls, the design and construction of new generation capacity requires substantial expenditures for a variety of goods and services. Our employment estimates consider how these expenditures vary by technology. For example, landfill gas capacity involves expenditures on turbines, air and gas compressors, pipes and pipefitting, iron and steel milling, environmental control machinery, and construction services.

The capital investments will generate direct and indirect jobs in a range of sectors involving skilled and professional occupations. Direct jobs would include, for example, new non-residential construction, metal fabrication, and engineering. Indirect jobs would include steel manufacturing, catalyst system manufacturing, control system manufacturing, and transportation services.

Table 2 presents estimates of the aggregate jobs created over five years through investments on capital improvements and new capacity. Between 2010 and 2015, the almost $94 billion of investment in pollution controls would generate an estimated 325,305 direct jobs and an estimated 683,734 direct and indirect jobs. The $102.4 billion of investment in new generation would create a total of 312,617 direct jobs and 774,151 direct and indirect jobs. Taken together, projected investments in capital improvements under the new EPA regulations would create an estimated 1,457,885 jobs over the next five years, or over 290,000 full-time jobs on average per year over the five year period.

Table 2. Aggregate Employment Estimates from Capital Improvements: Construction, Installation, and Professional Jobs (between 2010 and 2015)

	DIRECT	DIRECT + INDIRECT
Pollution controls	325,305	683,734
New generation capacity	312,617	774,151
TOTAL	637,922	1,457,885

Note: All values reported as "job-years". One job-year equals one year full-time employment.

To reflect the reality that construction, installation and professional jobs will be realized over the period during which the investments occur, the 1,457,885 figure represents total jobs created over the five year period, with each job-year representing a single job that lasts one year.[13] If all the expenditures were to happen in a single year,

13. The characteristics of the jobs – in terms of benefits, hours of work, and wages – would reflect the current composition of jobs in the industries impacted by the construction and installation expenditures.

1,457,885 jobs would be created that year. However, a more realistic assumption would be that the pollution control and new generation expenditures would be spread out over time. For purposes of illustration, assuming that 10 percent of the expenditures will occur in the first year, 15 percent in the second year, and 25 percent in each of the three subsequent years, the job creation in three peak years would be 25 percent of 1,457,885, or 364,471 jobs per year.

O&M Jobs

In addition to jobs associated with the design, construction and installation of pollution controls and new generation, the model also projects more permanent O&M jobs. Pollution controls, for example, need workers to maintain systems and handle waste. Similarly, power plants require workers to operate and maintain their equipment. We estimate the O&M jobs associated with these capital investments above by first estimating the O&M costs associated with the capital investment and then use the input-output framework to estimate the employment impacts.

In the case of older, less efficient existing capacity, much of which is already challenged by sustained low natural gas prices and reduced demand, companies may choose to retire existing capacity rather than installing pollution control systems, causing some O&M job reductions.[14] The CRA Study projects 35 gigawatts of coal plant retirements by 2015 in the Eastern Interconnection. To estimate the direct employment impact of predicted retirements, we did not use the input-output framework, but instead used detailed finance and operation data which the Federal Energy Regulatory Commission ("FERC") requires utilities to submit annually. Current employment levels from the FERC forms were matched to retired plants whenever possible. For retired plants with no matched employment data, we used state averages of employment per MW derived from plants in the same state with such employment data. We did, however, apply the input-output model to estimate indirect job losses from capacity retirements.

Table 3 shows the net Eastern Interconnection O&M employment impacts. Pollution control investments would create 7,170 O&M direct jobs and the new capacity investments would create 4,106 direct O&M jobs, offset by a reduction of 9,109 direct O&M jobs through capacity retirements, for a net gain of 2,167 direct O&M jobs. Combining both direct and indirect jobs results in a net gain of 4,254 jobs for the states analyzed.

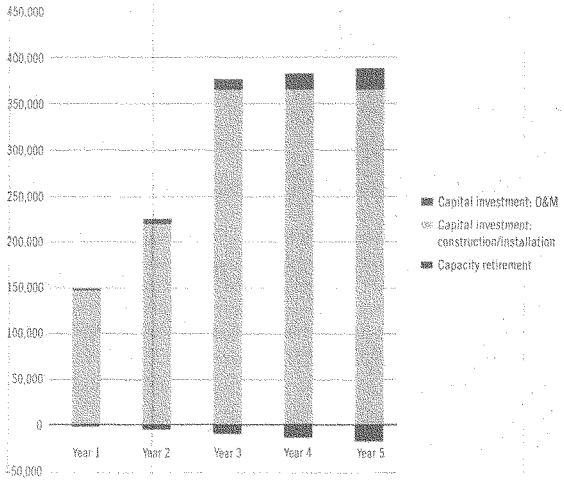
14. Some retirements may also generate short-lived gains in employment through necessary expenditures to shut down a facility (e.g. demolition, waste removal, etc). Also, companies may redeploy workers to other plants or offer early retirement opportunities. We do not, however, consider these possibilities.

Table 3. Estimates of Net O&M Jobs Associated with Capital Improvements and Retirement of Capacity

	DIRECT	DIRECT + INDIRECT
Pollution controls	7,170	14,077
New generation capacity	4,106	8,061
Retirement of existing capacity	(9,109)	(17,884)
NET TOTAL	2,167	4,254

Figure 2 summarizes Eastern Interconnection direct and indirect employment effects in the three main categories of *job creation and reductions*: (1) construction, installation and professional jobs created through new capital investment, (2) O&M jobs created through new capital investment, and (3) job reductions due to capacity retirements. Again, we assume that 10 percent of the adjustments under the new EPA standards will occur in the first year, 15 percent in the second year, and 25 percent in each of the three subsequent years. Clearly, construction, installation and professional jobs dominate the picture. However, more O&M jobs are created as power companies adapt to the new standards.

Figure 3. Estimates of Direct and Indirect Employment Effects Over Time (between 2010 and 2015)



III. STATE-LEVEL ANALYSIS OF EMPLOYMENT IMPACTS

Using job impact estimates from projected pollution controls and new generation investments and capacity retirements, we also calculated state-level impacts for the states in the Eastern Interconnection.

State-level Spending on Pollution Controls and New Generation

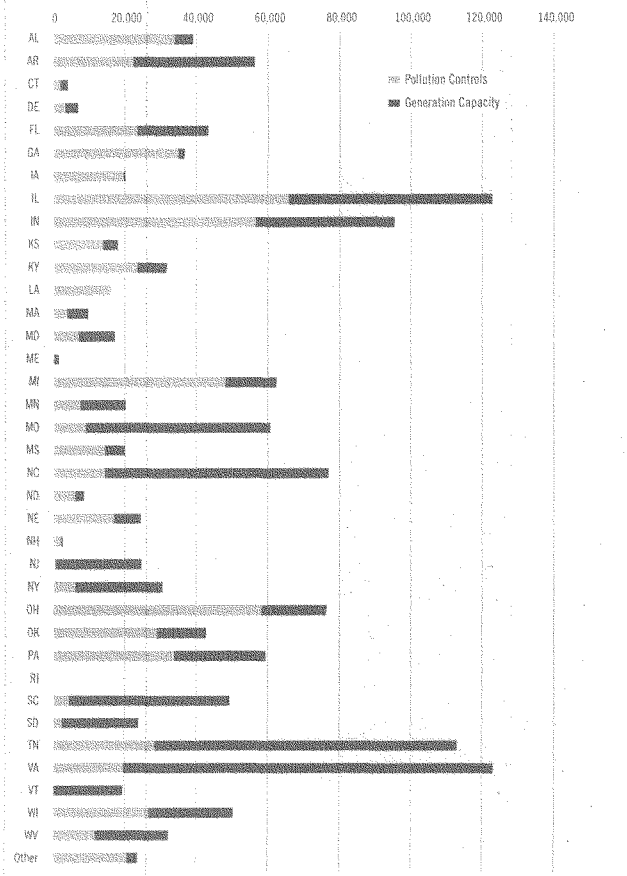
Table A1 in the appendix summarizes state-level capital improvements in terms of: (1) total spending on pollution controls; (2) total increase in energy capacity expressed as megawatts; and (3) capital expenditures needed to increase capacity by the relevant number of megawatts.

To estimate state-specific employment impacts, we used the same methodology as with the Eastern Interconnection analysis except that we relied on individual state input-output models. Figure 4 below shows estimated direct and indirect jobs created through both the pollution control and new generation investments detailed in Table A1. (Table A2 in the appendix summarizes the data used in Figure 4.) Not surprisingly, the number of jobs created tracks closely with the estimated spending. For example, Illinois, which has the highest projected spending on pollution controls over the five year investment period, has the greatest number of related jobs: 65,600 direct and indirect jobs. Similarly, Virginia with the highest projected investment in new capacity, experiences the largest number of related jobs: 103,365 direct and indirect jobs.

State-level Estimates of O&M Jobs from Capital Improvements

Table A3 in the appendix presents state-level estimates of the O&M jobs associated with the capital investments detailed in Table A1. Permanent O&M jobs increase with the amount of the capital investments and vary with the composition of technologies utilized. Although states with zero spending gain no O&M jobs, most states gain substantial numbers of such jobs. For example, Ohio gains over 1,100 O&M jobs (direct and indirect) from pollution control investments, and Virginia gains over 920 O&M jobs (direct and indirect) from new capacity investments.

Figure 4. Estimated Construction, Installation, and Other Professional Jobs Gains from Investment in Capital Improvements



Note: All values reported in "job-years". One job-year equals one year of full-time employment.

Table 4. Summary of Direct and Indirect State-Level Job Impacts from Capital Improvements and Coal Plant Retirements

	Capital Improvements		Retirements
	Construction, Installation, & Professional Job Gains over 5 years (in job years)	O&M Job Gains	O&M Job Reductions
AL	38,755	764	(1,184)
AR	56,110	690	0
CT	3,858	41	0
DE	6,542	114	(219)
FL	43,106	699	(970)
GA	36,465	584	(1,700)
IA	19,899	386	(475)
IL	122,695	1,429	(549)
IN	95,193	1,413	(563)
KS	17,812	342	(179)
KY	31,477	875	(982)
LA	15,842	297	(145)
MA	9,545	66	(157)
MD	16,922	226	(180)
ME	1,279	19	0
MI	62,346	987	(1,124)
MN	20,141	309	(542)
MO	60,512	1,727	(271)
MS	19,803	360	(183)
NC	76,966	973	(1,014)
ND	8,207	193	(58)
NE	24,331	208	(217)
NH	2,420	40	(155)
NJ	24,255	316	(123)
NY	30,496	303	(187)
OH	76,240	1,365	(1,772)
OK	42,651	623	0
PA	59,243	794	(1,272)
RI	359	323	0
SC	49,311	757	(968)
SD	23,909	379	0
TN	113,138	1,379	(869)
VA	123,014	1,225	(369)
VT	19,107	197	0
WI	50,233	784	(874)
WV	32,253	675	(583)
Other	23,453	277	(2)
TOTAL	1,457,885	22,138	(17,884)

Note: Employment estimates taken from Tables A2, A3, and A4.

State-level Estimates of Job Reductions from Retirements

Using FERC data for direct job reductions and state specific input-output models for indirect job losses, Table A4 in the appendix presents state-level estimates of job reductions from coal plant retirements. Notably, the CRA Study's projected coal plant retirements are only partly attributable to stricter EPA regulations. According to the CRA Study, substantial retirements are also driven by reduced demand and low priced, abundant natural gas.[15]

Furthermore, the estimated job reductions in Table A4 will be offset by gains in construction, installation, and professional jobs and O&M jobs due to capital investments in pollution controls and new generation capacity. As such, it is important to examine the net change in employment from all of these sources. To reflect the total impact of capital investments and coal plant retirements between 2010 and 2015, Table 4 provides a comprehensive side-by-side comparison using the estimated gains in construction, installation and professional jobs from Table A2, O&M job gains from capital improvements from Table A3 and job reductions due to coal plant retirements from Table A4.

Significantly, when considering both direct and indirect effects and all sources of job creation and job reductions, all of the states show a net gain in employment over the analysis period.

15. "However, given the recent discoveries of abundant, domestic natural gas supplies, a competing fuel for electric generation, as well as reduced electricity demand, coal plant owners may elect to retire some existing plants rather than investing the capital necessary to install pollution controls." *A Reliability Assessment of EPA's Proposed Transport Rule and Forthcoming Utility MACT.* Shavel and Gibbs, CRA, December 16, 2010, at p. 3.

CONCLUSION

After evaluating the employment impacts of the electric power sector's transformation to a cleaner, modern fleet, we conclude that the installation of air pollution controls and construction of new generation under the proposed and planned EPA air rules will lead to a net job gain in the Eastern Interconnection states.

The installation, design and construction of pollution controls and additional generation capacity will create the greatest number of new jobs. Although some O&M jobs will be lost because of projected coal plant retirements, these losses will be offset by new O&M jobs from pollution control and new generation capacity investments, resulting in net job gains across all the states studied.

Notably as well, this report only considered the net employment impacts from capital investments in pollution controls and new generation and from coal plant retirements. When evaluating the overall impact of new EPA air regulations, one must also recognize that the positive job impacts detailed in this study do not provide the entire picture, as the air regulations will also provide substantial economic benefits from cleaner air, improved public health and increased competitiveness through innovative technologies.

APPENDIX A

Table A1. Pollution Controls and New Generation Capacity Investments from the CRA Study

State	Pollution Controls	Additional Installed Capacity (MW)	Investment in New Capacity
AL	$4.1 billion	766	$691 million
AR	$2.4 billion	1,472	$4.2 billion
CT	$229 million	220	$381 million
DE	$414 million	585	$687 million
FL	$2.7 billion	1,793	$2.3 billion
GA	$4.3 billion	89	$228 million
IA	$2.5 billion	17	$46 million
IL	$7.6 billion	2,946	$7.3 billion
IN	$7.2 billion	2,613	$4.8 billion
KS	$1.8 billion	225	$539 million
KY	$3.8 billion	898	$1.1 billion
LA	$2.1 billion	—	—
MA	$504 million	108	$653 million
MD	$1.0 billion	2,558	$3.3 billion
ME	—	86	$201 million
MI	$6.3 billion	1,033	$1.7 billion
MN	$1.1 billion	652	$1.4 billion
MO	$6.6 billion	4,103	$6.8 billion
MS	$1.5 billion	773	$754 million
NC	$2.0 billion	6,488	$7.9 billion
ND	$1.1 billion	175	$454 million
NE	$2.2 billion	403	$1.0 billion
NH	$266 million	20	$57 million
NJ	$51 million	3,100	$3.8 billion
NY	$944 million	1,826	$3.5 billion
OH	$7.1 billion	1,792	$2.2 billion
OK	$3.5 billion	993	$1.6 billion
PA	$4.7 billion	2,321	$3.3 billion
RI	—	20	$57 million
SC	$695 million	5,554	$5.8 billion
SD	$269 million	3,083	$3.0 billion
TN	$3.6 billion	4,868	$9.9 billion
VA	$2.6 billion	12,531	$13.8 billion
VT	—	1,359	$3.0 billion
WI	$3.4 billion	1,285	$2.9 billion
WV	$2.6 billion	960	$2.7 billion
Other	$2.6 billion	333	$403 million
TOTAL	$93.6 billion	68,047	$102.4 billion

Table A2. Estimated Construction, Installation, and Other Professional Job Gains from Investment in Capital Improvements

State	Pollution Controls		Generation Capacity		Total
	Direct	Direct + Indirect	Direct	Direct + Indirect	Direct + Indirect
AL	16,298	33,495	1,955	5,260	38,755
AR	11,334	22,409	14,325	33,701	56,110
CT	799	1,617	844	2,240	3,858
DE	1,649	3,191	1,626	3,350	6,542
FL	9,856	23,271	6,552	19,834	43,106
GA	15,642	34,836	503	1,629	36,465
IA	10,282	19,602	112	297	19,899
IL	30,594	65,600	21,928	57,096	122,695
IN	27,763	56,648	15,788	38,545	95,193
KS	7,067	13,706	1,720	4,106	17,812
KY	11,892	23,222	3,155	8,255	31,477
LA	8,004	15,842	0	0	15,842
MA	1,735	3,678	2,445	5,867	9,545
MD	3,236	6,967	4,797	9,955	16,922
ME	0	0	570	1,279	1,279
MI	21,534	48,097	5,425	14,249	62,346
MN	3,557	7,590	5,067	12,551	20,141
MO	4,237	8,902	20,668	51,610	60,512
MS	7,514	14,202	2,323	5,601	19,803
NC	6,485	14,275	24,689	62,691	76,966
ND	3,190	5,971	1,073	2,237	8,207
NE	8,261	16,968	3,196	7,363	24,331
NH	1,031	2,068	122	352	2,420
NJ	134	308	9,157	23,946	24,255
NY	2,960	6,155	9,998	24,341	30,496
OH	26,299	58,175	6,407	18,065	76,240
OK	14,380	28,898	5,709	13,753	42,651
PA	15,157	33,833	9,096	25,411	59,243
RI	0	0	118	359	359
SC	2,038	4,421	17,625	44,889	49,311
SD	1,247	2,382	9,060	21,527	23,909
TN	13,455	28,445	35,956	84,693	113,138
VA	9,450	19,648	41,835	103,365	123,014
VT	0	0	9,323	19,107	19,107
WI	12,555	26,801	8,837	23,431	50,233
WV	6,455	11,746	9,692	20,507	32,253
Other	9,214	20,764	919	2,688	23,453
TOTAL	325,305	683,734	312,617	774,151	1,457,885

Note: All values reported in "job-years". One job-year equals one year of full-time employment.

Table A3. Estimated Operating and Maintenance Job Gains from Investments in Capital Improvements

State	Pollution Controls		Generation Capacity		Total
	Direct	Direct + Indirect	Direct	Direct + Indirect	Direct + Indirect
AL	359	684	42	80	764
AR	229	417	150	273	690
CT	11	24	8	17	41
DE	34	60	30	54	114
FL	202	461	105	238	699
GA	274	563	10	20	584
IA	212	381	3	5	386
IL	481	1,007	202	422	1,429
IN	564	1,060	188	352	1,413
KS	160	289	30	53	342
KY	398	738	74	137	875
LA	146	297	0	0	297
MA	28	59	4	8	66
MD	31	81	55	145	226
ME	0	0	10	19	19
MI	405	850	65	137	987
MN	89	172	71	137	309
MO	615	1,157	304	570	1,727
MS	155	273	50	87	360
NC	162	306	355	667	973
ND	89	162	17	31	193
NE	60	171	13	37	208
NH	18	35	2	5	40
NJ	50	105	102	212	316
NY	58	114	97	188	303
OH	599	1,161	106	204	1,365
OK	241	489	66	134	623
PA	255	571	100	223	794
RI	0	0	132	323	323
SC	68	124	352	634	757
SD	24	44	184	336	379
TN	350	634	412	745	1,379
VA	136	297	428	928	1,225
VT	0	0	101	197	197
WI	302	560	121	224	784
WV	275	485	108	190	675
Other	89	248	12	30	277
TOTAL	7,170	14,077	4,106	8,061	22,138

Table A4. Estimated Job Reductions from Coal Plant Retirements

State	Capacity (MW) Retired	Job Reductions	
		Direct	Direct + Indirect
AL	2,197	623	1,184
AR	0	0	0
CT	0	0	0
DE	447	123	219
FL	1,583	427	970
GA	3,018	831	1,700
IA	1,066	265	475
IL	901	263	549
IN	1,440	300	563
KS	287	99	179
KY	1,917	531	982
LA	259	71	145
MA	271	75	157
MD	250	69	180
ME	0	0	0
MI	1,926	537	1,124
MN	1,040	282	542
MO	479	144	271
MS	378	104	183
NC	3,009	540	1,014
ND	116	32	58
NE	276	76	217
NH	208	80	155
NJ	216	59	123
NY	348	96	187
OH	3,851	917	1,772
OK	0	0	0
PA	2,070	570	1,272
RI	0	0	0
SC	2,003	537	968
SD	0	0	0
TN	1,746	481	869
VA	683	170	369
VT	0	0	0
WI	1,437	474	874
WV	1,606	331	583
Other	2	1	2
TOTAL	35,029	9,109	17,884

APPENDIX B

Methodology and Assumptions

a. Response of the Electric Sector to Proposed and Planned EPA Air Regulations

The December 2010 CRA Study developed forecasts of the electricity generation sector's responses to EPA's proposed and planned air regulations. For these forecasts, CRA researchers used a model of the energy sector, the North American Electricity and Environment Model (NEEM), to predict changes in capacity and investment expenditures[16]. We used the modeled responses to estimate employment impacts. The specific responses include: (1) expenditures on pollution control technologies (ACI, ACI+, FGD, and SCR), (2) additions to generating capacity involving nine technologies: advanced coal, IGCC, combined cycle, combustion turbine, nuclear, municipal waste, biomass, solar PV, and wind, and (3) coal plant retirements.

The CRA Study included information on pollution controls, new generation capacity and coal plant retirements was provided at the plant level. We aggregated this information to state-level and Eastern Interconnection-wide estimates of retirements and investment in pollution controls and new generation capacity.

b. Linking Expenditures on Pollution Controls and Generation Capacity Additions to Sectors in the Input-Output Model

Jim Staudt of Andover Technology Partners, provided details of the precise categories of expenditures associated with each of the four pollution control technologies. Dr. Staudt is President of Andover Technology Partners and a nationally recognized expert on air pollution control, with a Ph.D in Engineering from the Massachusetts Institute of Technology. These expenditure breakdowns were linked to PERI's IMPLAN 3.0 input-output model to generate employment multipliers. Select examples of the types of expenditures/activities used to generate the employment estimates include:

ACI and ACI+: equipment (e.g. sorbent injector and disposal systems), engineering services, duct work, and electrical installation services.

FGD scrubbers: water treatment systems, chimney construction, fans & ductwork, engineering services, contractor services.

SCR: reactor housing construction and installation, ammonia handling systems, ductwork & fans, engineering services.

We matched each of these spending areas with an industrial sector in the input-output model. backing out some retrofits that were known to have been completed in 2010.

16. "Appendix B: Modeling and Methodology," *A Reliability Assessment of EPA's Proposed Transport Rule and Forthcoming Utility MACT*, Shavel and Gibbs, CRA, December 16, 2010, at p. 35-37.

We then combined individual spending categories into a single aggregate category for each of the four technologies (ACI, ACI+, FGD, and SCR), using individual expenditure shares as weights. We then generated employment estimates associated with expenditures on each of the four pollution control technologies using the input-output model.

We estimated employment creation from expenditures on generation capacity for each of the nine technologies using a similar procedure. Activities involved in the installation of new generation capacity are identified from industry sources. These activities are then matched with the relevant sectors in the input-output model to produce employment multipliers.

The sum of the indirect employment effects across the Eastern interconnection states based on the state-level input-output models will fall short of the aggregate estimates presented in Table 1, which are based on a national input-output model. The reason for the discrepancy is that indirect effects will be lower at the state level than at the Eastern Interconnection level. For example, based on the CRA Study's estimate, Ohio is expected to spend about $7.1 billion on pollution control technologies. However, firms installing these capital improvements may purchase goods and services from other states. These indirect purchases will create jobs in other states—not Ohio. In contrast, the aggregate estimates include all indirect effects from all the states combined. The state-level input-output models produce estimates of employment effects in one state only. They do not allow us to allocate the indirect effects that occur outside the state to other specific states (e.g., we do not know how much of the spending by Ohio's construction industry is on inputs from Missouri, for instance).

To account for this discrepancy, we allocate the difference between the total employment estimates (direct and indirect) from the national input-output model and the sum of the state-level estimates according to each state's share of the aggregate employment effects across all states.

d. Estimating operating and maintenance expenditures associated with capital investments.

Estimates of O&M expenditures associated with investments in pollution controls are based on estimates compiled by Industrial Economics, Inc. of Cambridge, MA, for FGD scrubbers used in electric generation applications. The O&M estimates are derived from the EPA's Coal Utility Environmental Cost (CUE Cost) spreadsheet. The cost estimates produced by Industrial Economics include a 30 percent premium for administrative employment. To restrict the analysis to O&M jobs, we do not include this premium in the employment estimates, in order to restrict the analysis to O&M jobs. O&M expenditures total an estimated 6.6 cents for each dollar invested in FGD technologies. We assume that this same ratio of O&M costs to investment applies to the other pollution control technologies: ACI, ACI+, and SCR. We then estimate total O&M expenditures from the total dollar value of investments in pollution controls. The input-output model generates employment estimates based on these expenditures.

Estimates of O&M expenditures linked to new generation capacity are based on O&M expenditures used by the U.S. Energy Information Administration (EIA). Fixed and

variable O&M costs associated with each of the nine technologies are taken from the EIA publication, *Assumptions to the 2010 Annual Energy Outlook* (Table 8.2). For purposes of estimating O&M employment, O&M costs per kilowatt of installed capacity are computed assuming peak summer capacity. The O&M cost per KW can then be used to calculate total O&M expenditures, in response to changes in emissions regulations, associated with the predicted state-level and Eastern Interconnection investments in new generation capacity.

e. Estimates of direct employment reductions from coal plant retirements

Current employment levels were obtained from FERC forms for some of these retired plants. FERC employment numbers are matched to retired plants whenever possible. For retired plants with no matched employment data, we used state averages of employment per MW derived from plants in the same state that do have such employment data. For states with planned retirements and no employment data whatsoever, national averages of employment per MW are used.

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Ms. SPEIER. Next, Mr. Chairman, I would like to submit for the record a Wall Street Journal letter to the editor that was signed by the chairman and president and CEO of PG&E Corp., Calpine, and many others, and in that Wall Street Journal article they say, contrary to claims that the EPA's agenda will have negative economic consequences, our companies' experience complying with air quality regulations demonstrates that regulations can yield important economic benefits, including job creation, while maintaining reliability. That too I would like to——

Chairman ISSA. Without objection, if it is delivered to the desk, it will be included.

[The information referred to follows:]

Speier VC accepted no objection

THE WALL STREET JOURNAL.
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LETTERS | DECEMBER 8, 2010

We're OK With the EPA's New Air-Quality Regulations

Your editorial "The EPA Permitorium" (Nov. 22) mischaracterizes the EPA's air-quality regulations. These are required under the Clean Air Act, which a bipartisan Congress and a Republican president amended in 1990, and many are in response to court orders requiring the EPA to fix regulations that courts ruled invalid.

The electric sector has known that these rules were coming. Many companies, including ours, have already invested in modern air-pollution control technologies and cleaner and more efficient power plants. For over a decade, companies have recognized that the industry would need to install controls to comply with the act's air toxicity requirements, and the technology exists to cost effectively control such emissions, including mercury and acid gases. The EPA is now under a court deadline to finalize that rule before the end of 2011 because of the previous delays.

To suggest that plants are retiring because of the EPA's regulations fails to recognize that lower power prices and depressed demand are the primary retirement drivers. The units retiring are generally small, old and inefficient. These retirements are long overdue.

Contrary to the claims that the EPA's agenda will have negative economic consequences, our companies' experience complying with air quality regulations demonstrates that regulations can yield important economic benefits, including job creation, while maintaining reliability.

The time to make greater use of existing modern units and to further modernize our nation's generating fleet is now. Our companies are committed to ensuring the EPA develops and implements the regulations consistent with the act's requirements.

Peter Darbee, *chairman,president and CEO,PG&E Corp.*; Jack Fusco, *president and CEO, Calpine Corp.*; Lewis Hay, *chairman and CEO, NextEra Energy, Inc.*; Ralph Izzo, *chairman, president and CEO, Public Service Enterprise Group, Inc.*; Thomas King, *president, National Grid USA*,; John Rowe, *chairman and CEO, Exelon Corp.*; Mayo Shattuck, *chairman, president and CEO, Constellation Energy Group*; Larry Weis, *general manager, Austin Energy*

Ms. SPEIER. And finally I would like to submit to the committee and for the record letters from Chrysler, Ford, and General Motors, all of whom recommend that they embrace the greenhouse gas and fuel economy announcements by the EPA, again, I think a reflection that America's businesses are interested in cleaning the air, making sure it is safe for all Americans, and creating jobs as well.

Having said that, let me start off by saying eight people in my district died in an explosion in September, fathers and sons, mothers and daughters, a horrific incident that underscored the problem we have in this country relative to regulations, because, as more and more is being discovered by the National Transportation Safety Board—and, I might add, they better not get defunded or reduced funding in this continuing resolution—what we are finding is that a specific utility gamed the system so that they would not be subject to greater regulation and the kind of assessment necessary to test a particular pipe.

So I think that when we look at regulation, we have to look at it in the context of is it saving lives; is it protecting Americans; is it cleaning the air; is it cleaning the water. And when we can answer those questions yes, we have to be willing to step up to the plate.

The truth of the matter is that Germany has a tougher cap-and-trade law than was being considered by this Congress, and while our exports have been reduced in the last 10 years, the exports as a percentage of market share in Germany have increased.

So having said all of that, Mr. Chairman, I do have a question, and it is for Mr. Fredrich. You indicated, Mr. Fredrich, that with the health care reform legislation you would actually be reducing the number of jobs in your company, is that correct?

Mr. FREDRICH. Yes. We will lower it to whatever is under the limit.

Ms. SPEIER. All right. So you would go from 62 to 49 intentionally so that you would not be subject to health care reform, is that correct?

Mr. FREDRICH. Correct. That is correct.

Ms. SPEIER. Now, you do not offer health insurance to your employees now, I gather?

Mr. FREDRICH. Yes, we do.

Ms. SPEIER. And what do you offer?

Mr. FREDRICH. We offer a high deductible HSA.

Ms. SPEIER. So that is a savings account.

Mr. FREDRICH. Health savings account.

Ms. SPEIER. So they get how many thousands of dollars a year?

Mr. FREDRICH. What do you mean they get?

Ms. SPEIER. Do you put money into their health savings account?

Mr. FREDRICH. No.

Ms. SPEIER. So you really don't provide any money from the company in terms of making sure that your employees are insured.

Mr. FREDRICH. Sure we do. Our monthly premium for family coverage is $1,000, and we pay 70 percent of it.

Ms. SPEIER. So you pay 70 percent.

Mr. FREDRICH. Of the premium.

Ms. SPEIER. Of the premium. So is it a catastrophic policy? I am trying to understand.

Mr. FREDRICH. No. No, it is actually a very good policy because for normal things like annual checkups or mammograms or colonoscopies, it pays 100 percent with no deductible at all. But what it eliminates is people going to the emergency room because they have a cold, which is just a very expensive way. What it does try and do is put some consumerism into purchasing medical services, and I feel that is the problem with the system right now; it is a third-party payor system where people don't even ask what it costs. The last time you went to the doctor, did you ask how much does this cost?

Ms. SPEIER. Well, I actually——

Chairman ISSA. The gentlelady's time has expired.

Mr. FREDRICH. Oh.

Ms. SPEIER. Thank you, Mr. Chairman.

Chairman ISSA. I thank you.

The gentleman from Texas, Mr. Farenthold.

Mr. FARENTHOLD. Thank you very much, Mr. Chairman.

I wanted to followup on a couple of things that I heard earlier. I was a small business owner before I came to Congress. I think the fourth employee I hired was an employee to help me deal with paperwork; and I was in a service industry that isn't that highly regulated. So it starts as simple as filling out the forms for your first employee and meeting your tax returns, so I understand it gets in the way of doing what you are passionate about, building what you want to build or serving the people you want to serve.

We have heard several people say that regulations actually create jobs. I ponder how many of those are bureaucrats and lawyers, or how many of those just add to the cost of doing business. But my real question was, Mr. Timmons, I think you said it is 18 percent more expensive to open a factory in the United States, is that an accurate number?

Mr. TIMMONS. To do business in the United States, yes.

Mr. FARENTHOLD. Does it have to be exactly equal or are your members willing to pay a slightly higher cost to——

Mr. TIMMONS. To do business in the United States of America? Absolutely. The question really is where is that sweet spot. I can't answer that. Every company has to make that decision on their own. But what we do know is that we have lost manufacturing jobs. It wasn't just during this last recession; it has been over the last 12, 14 years. And what we are seeing is manufacturers looking at other industrialized nations and other emerging economies and saying it makes more sense economically——

Mr. FARENTHOLD. And so as you look at, for instance, environmental regulations, you go over to Mexico, China, wherever you go that don't have the same regulations, and it gets into the same air we breathe anyway.

Mr. TIMMONS. Or they have the same outcome, but their regulations are perhaps administered in a different way and are less costly to administer. I do want to point out, and I have said this several times, but that 18 percent number does not include the cost of labor. We believe that it makes sense to pay employees more in the United States because we believe in a higher standard of living here.

Mr. FARENTHOLD. And, Mr. Nassif, I think you hit on something that I wanted to talk a little bit more about too, and I would appreciate the rest of the panel's input on this. You look at some companies in the travel and entertainment industry. Their employees are basically threatened with getting fired if they say no to a customer. When you are dealing with a Federal agency, do you find that the attitude is we are from the Government, we are here to help you, how can we find a way for you to come into compliance with these regulations, or it is just a you are out of compliance with this regulation, you are shut down? Whoever wants to take that.

Mr. NASSIF. Each regulatory agency handles it differently. As I say, when we are dealing with the Department of Agriculture, we have a very close relationship and they have a very strong understanding of what our needs are, so there is always a nice honest dialog. When we are dealing with agencies like the Department of Labor, there is no such thing as we are your friend, we are here to help you. We are here to regulate you, we are here to enforce things, and we are here to punish you if you make even technical violations.

Mr. ALFORD. That is one of my best bar jokes. You know, where are you from? I am from Washington, DC, and I have come to help you. It is guaranteed laughter there. But we are for regulations, good regulations. We are not against regulations; we are against onerous, nonsensical, punitive regulations that do not end up in a solution manner. And if we were to evaluate all our regulations, pare out the bad regulations, keep the good regulations, we would be a better country and we would be without 70 percent of the regulations.

Mr. BUSCHUR. Congressman, the example I cited about the lead paint ruling by the EPA, we had acquired all the necessary permits for that particular project, State permits, local permits, everything required was onsite, in place, and the actual field inspector walked on the job site and said I think this falls underneath the lead RRP rule and needs to be investigated.

At that point we had no comeback to an OSHA inspector to say, no, we don't think so, all the permits, everything is in place. He saw the paperwork, he signed the paperwork. But he also stopped the job. The general contractor, as I explained, had to spend approximately $10,000 in suits and gear and training, stopped the job, slowed the job down down the road, and we find out that the OSHA inspector was wrong.

Mr. FARENTHOLD. Well, thank you very much. It is almost lunchtime, so I will yield back the short amount of time I have left.

Chairman ISSA. All of us thank you.

We now recognize the gentleman from Massachusetts, Mr. Tierney, for 5 minutes.

Mr. TIERNEY. Thank you, Mr. Chairman.

This is all very interesting. I think that what we established early on is everybody here believes in a balanced economy. We think that there has to be capitalism, but there has to have some regulation. We want the regulation to be fair, we want it to be about necessary things, we want it to be balanced. So we have just spent a couple hours and we will probably spend a couple more beating that dead horse around and around. But to the extent that

we are all here to talk about hyperbole, these over-the-top allegations that regulations are just, in and of themselves, bad or whatever, I don't think it makes a lot of sense.

We had an economic collapse in 2007 that was right on the heels of probably what was an era known mostly for its excessive deregulation. So that didn't work very well, and particularly with respect to the financial services of Wall Street, but it was broader than that. And now here we are looking at business. In the third quarter of 2010, U.S. corporate profits were $1.66 trillion, trillion dollars, up 60 percent. So if we are talking about, oh my God, over-regulation the last 2 years, somebody is going to have to explain to me how, in spite of all that onerous regulation and the dearth of jobs and corporate success, they managed to make a 60 percent increase and $1.66 trillion.

So I think what we want to do is weed out the hyperbole, get down to it. If we want to have hearings on specific regulations that we think are onerous or bad, let's have the hearings. I mean, I come from a community that can tell you story after story about the fishing regulations from NOAA. So I am not opposed at all to looking at those regulations, and we passed regulations and laws that we proposed to deal with what we think was excessive enforcement, excessive application and bad regulations. So that is what this committee should be about, not this general hyperbole about all regulations, and somebody supposedly likes regulations and somebody doesn't. It amounts to a bunch of nonsense.

But just to make a point on some of this, the talking points that we get from some industries on an area that I happen to know something about that on that, and I don't want to seem like, Mr. Alford, I am coming at you, but you were the loudest and the most aggressive about this, and I want to maybe give you some information that apparently you don't have, because it seems to me you were getting the private college talking points back to us.

You made a point about student loans not being taken away from Sallie Mae and groups like that. We saved $60 billion in taxpayer money, $60 billion. And what do we do with it? Besides paying down some on the debt, which is a problem that we all have, we increased Pell Grants for students who needed to have access to college; we reduced the interest rates on student loans for students that need to be able to get through school; we had an increase-based repayment program so that now students can get out of school and have a set amount of money they pay down their loans, knowing that it won't be a barrier to entry and that it can be a way for them to take a job that they want when they get out and to stay going on that; and we put money into community colleges so that they can cooperate with industry and labor and the work force investment board's public sector to make sure people have the skills and education ready to take jobs. Maybe we should have a hearing about that and go forward.

But you talked also, Mr. Alford, about the student loan default regulations and private for-profits, so let me tell you a little bit of information we have had on hearings in the Education Committee and the information that comes from that. It is set up to protect students from taking on unsustainable debt. It is a debt that they

can't repay. It is to protect the taxpayers from high loan default rates.

The Higher Education Act specifically put in a provision, and we wrote it, so we know, career education programs that receive Federal aid must prepare students for a gainful employment in a recognized occupation. Now, regulation doesn't just target the for-profits; it applies to all of the institutions. It doesn't affect students' ability to get a loan; it talks about the universities and the colleges. Students, they are held accountable for life. If they get a loan to an institution that doesn't provide them with the education or skills to get a job, they can't shake it. It affects whether they can buy a house; it affects whether or not they ever have to go into bankruptcy, which is very difficult for them. It affects every decision they make, their credit rating and so on down the line.

Colleges, however, aren't generally held accountable at all. So this regulation doesn't even target the whole college; it just targets those programs within the college that have a very low repayment rate and a very high debt burden to those students. The college eligibility for student aid is tied to a specific credit default rate. You might want to know that the Cohort default rate for for-profits is the highest; it is double the national average, it is 25 percent of the students that go to those institutions default on that. Private not-for-profits is 7.6 percent, and the public is only 10.8 percent. For-profits enroll 1 out of every 10 students, but they get $1 out of every $4 in Federal aid.

So this is all about protecting the taxpayers' money and protecting those students who end up with a big debt and no job in a place that they can get it on that.

Now, in 2007, 92 percent of the undergraduates in the for-profits borrowed——

Chairman ISSA. The gentleman's time has expired. Is there a question?

Mr. TIERNEY. No, there is not a question. There is an educational process going on here since we were talking about the education, and maybe a suggestion to the chairman that instead of all this hyperbole, we talk about specific regulations that might be a problem that we can all agree on ought to be addressed. But I am happy to yield back.

Chairman ISSA. I thank the gentleman.

We will now recognize the gentleman from Pennsylvania who, for 57 years, he and his family have been small business people; I think that comes out to be since 5 years old he has been a small businessman, for 5 minutes, Mr. Kelly.

Mr. KELLY. Thank you, Mr. Chairman. First of all, I want to thank all the panel for being here. It is interesting to get a lesson from people that are running a business. It is $1½ trillion in the red each year, year after year, and I am sure you are going to take that home and really learn from that.

But for people who really do have skin in the game and people who do survive by doing it on both knees and looking into the abyss, I have done it myself and I know how close we come each day to not having our businesses anymore, so would you please, if you could, just take a few minutes. Because the true trick is not pulling a rabbit out of the hat, it is putting the rabbit in the hat

to begin with. And I think that this body needs to understand that where small business comes from, where business comes from is not from government, it is from the private sector.

Mr. Buschur, I know what you are going through; I go through the same thing. My business is down over 35 percent. Mr. Fredrich, I understand what it is like to look into the abyss, I have done it many times myself. The magic hours, the bewitching hours, which most Members of Congress have never had to face because they don't sign the front of these checks, is between 2 and 4 a.m., when your body may be fatigued, but your mind won't let you sleep.

So, if you could, just walk us through some of the things that you have had to do to keep your businesses open, keep jobs alive in your community, and what you have had to do. So each of you if you could just take a few minutes and maybe educate us on what we need to hear and what the country has to hear from the people who truly do lead this country, and that is the small business people.

Mr. BUSCHUR. I guess one of my largest experiences last year was in order for my company to bid public work and continue to receive bonding, because of the previous year being extremely poor, I had to financially put additional six figure dollars into the business so I could secure bonding, which, again, allowed us to bid those jobs but prevented us from replacing trucks, from replacing bending equipment, things like that we should have to be more efficient and be on top of our game.

It has just been a real tough battle to survive the problems and the regulations being slapped on us. In all honesty, I respect what is being said and I am not anti-safety or anti anything like that; I just think it needs to be done as a team, and not as someone telling you here is what you are going to do and here is what you have to do, and there is no explanation for reasons why.

Mr. FREDRICH. Well, you will laugh when you hear this, but one of the things that I have done is I built, well, I call it the penthouse in our plant. I live 70 miles from our facility; our facility is in Manitowoc and I live in Fond du Lac. So I leave on Monday morning from home and I stay in our plant every night, Monday, Tuesday, Wednesday, and Thursday night; then I go home on Fridays. I used to stay in the fashionable Comfort Inn, but that is $70 a night and that adds up, so now I am living large; I have a bed, I have a recliner, I have a 36-inch flat screen TV, and I sleep in the plant with my dog.

Monetarily, the hardest thing for any business is cash-flow. When you run out of cash-flow, you are dead; you can't go anywhere. And I would hear talking about the recovery, we need to get the banks to lend money so companies can make payroll and hire people. If you have to borrow money to make your payroll, you are dead, usually. Maybe there are rare occasions, but you are dead.

So there have been times when I have had—and when we first started, I said we closed our business 1 month after 9/11 and we went into a recession, and we almost went out of business; and we would have had we not been with a privately held bank who knew us. He knew us as people and we weren't going to run away from it; and we never missed an interest payment or a principal payment, but we lost money. And there were many times when I

would have to write a check on my personal savings to cover payroll. Had to do it.

Or I would have to pay a supplier, because there are some suppliers, you guys don't know this, but there are some suppliers which can kill you and others which you can push off. We always push off like attorneys and accountants and those guys, because they are not going to get anything from us anyway unless we stay in business. But raw material suppliers? No, can't do it. You have to pay your taxes, you have to pay all your employment taxes. You don't do that, you go to jail. And we can't print any money like you guys; we can't turn on the press——

Mr. KELLY. Not all you guys, OK?

Mr. FREDRICH. OK, some of you.

Mr. KELLY. I am with you.

Mr. FREDRICH. Anyway, so it is—and somebody asked the question would you do it all over again. You said no. I would. I love it. I absolutely love it. It is like a great rush every day. It is full of, full of frustration, but I love it, and I wouldn't do anything else.

Mr. KELLY. Well, God bless you for what you are doing. I understand. I have 110 people that rely on me to make sure that every 2 weeks they can cash a check, so I am with you.

Chairman ISSA. I thank the gentleman.

We now recognize the very affable, happy gentleman from Missouri, Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman, and thanks for conducting this hearing. You know, I think it is important that our committee's work be based on fact rather than rhetoric. Recently there have been many statements asserting that over-regulation has resulted in massive job losses. But, in fact, it was deficient and sometimes nonexistent regulation of the financial sector that resulted in the financial collapse and loss of more than 8 million jobs. Alan Greenspan testified before this committee in 2008 about regulation. Here is what he said: "I made a mistake in presuming that the self-interest of organizations, specifically banks and others, were such that they were best capable of protecting their own shareholders and their equity in their firms." That is why it is so important that Congress passed the Wall Street reform bill last year to increase transparency and accountability.

Now, a lot of the letters that the committee received from major companies criticized the Wall Street reform bill, but the provisions they criticized had little to do with jobs, and let me give you a few examples. The companies complained about having to disclose CEO compensation; they complained about having to return bonuses when corporate earnings were inflated; and they complained about requiring all companies to disclose payments to foreign governments.

This is a panel-wide question. You know, these provisions are all about disclosure and transparency, so let's start with Mr. Buschur. Do you think disclosing CEO compensation prevents a company from creating jobs?

Mr. BUSCHUR. I am not sure, sir, it would prevent a company from creating jobs. I assume you are talking public companies, not private companies?

Mr. CLAY. Public companies.

Mr. BUSCHUR. Public companies? As a stockholder of public companies, I think I have that right to have that disclosure, and I wouldn't be objectionable to it, and I can't see what harm it would do.

Mr. CLAY. OK.

What about you, Mr. Fredrich? Does disclosing CEO compensation——

Mr. FREDRICH. I think it is no one's business. It is already disclosed to the Internal Revenue Service. And what I do with my company, since I take 100 percent of the risk, is my business, not anybody else's. And you made one point which I must ask you about, returning bonuses related to overstated earnings.

Mr. CLAY. Yes.

Mr. FREDRICH. Fannie Mae had that situation, overstated earnings. Bonuses were paid. Were they returned?

Mr. CLAY. Well, they were caught, weren't they?

Mr. FREDRICH. They were not returned.

Mr. CLAY. They were caught, weren't they?

How about you, Mr. Alford?

Mr. ALFORD. I have no problems with it, sir. I think it is rather snoopy, but I have no problems with it.

Mr. CLAY. OK.

How about you, Mr. Nassif?

Mr. NASSIF. Our business is as an association, we are not for-profit, but we run several for-profit corporations. I believe that people who are involved in public corporations should disclose all compensation; people in government should disclose all compensation; people who are taking Federal funds based upon needs may need to disclose that same compensation because they need to justify the need for the loan.

Mr. CLAY. Thank you for your response.

Mr. Timmons.

Mr. TIMMONS. Yes, Mr. Clay. All the issues that you brought up are not ones that were addressed in our letter, and you also talked about the financial services reform legislation. Obviously, that is not the industry that we represent, so we did not oppose or support that legislation. I think that arguments can be made on both sides of the question, on the question that you asked specifically, and one thing that I think is very important is that any regulatory requirements not create a situation where a political argument could be made or a populist argument could be made against a company and take the company off of its mission to create the products that they are trying to create. And sometimes I think that type of information can cause that.

Mr. CLAY. Mr. Timmons, since we are on the subject of job creation, what are your thoughts and NAM's on the outsourcing of American jobs?

Mr. TIMMONS. One of the points that I made earlier, sir, was that it is 18 percent more expensive to do business in the United States when you don't factor in the cost of labor, but you are looking at the cost of regulation, you are looking at the cost of energy in this country, and you are looking at tort costs. And what we see is that many companies are having to make very painful decisions to locate elsewhere not only to be closer to their customer base, but to

be able to compete and succeed in a very competitive international marketplace. We want jobs to be created here in this country; that is why we exist. We want to see manufacturing flourish in the United States and we want it to continue to grow and to be a vital part of economic growth and job creation here.

Mr. CLAY. And that is why you fought so hard in closing tax incentives, to stop outsourcing? Your association has fought hard to stop tax incentives——

Mr. TIMMONS. To stop what?

Mr. CLAY [continuing]. For outsourcing. For outsourcing jobs.

Mr. TIMMONS. What specific piece of legislation are you talking about?

Mr. CLAY. Well, last year you opposed the payroll tax holiday and then——

Mr. TIMMONS. I am not sure that is correct, sir.

Mr. CLAY. Yes you did.

Mr. TIMMONS. But I would be happy to——

Mr. CLAY. You fought closing tax incentives to stop outsourcing of American jobs.

Mr. TIMMONS. We may have some disagreements on exactly what issue you are talking about,——

Mr. CLAY. OK, well——

Mr. TIMMONS [continuing]. But I would be happy to talk to you afterwards.

Mr. CLAY. Yes. I will share it with you.

Mr. TIMMONS. Thank you.

Mr. CLAY. Thank you.

I yield back.

Chairman ISSA. Would the gentleman yield? Were the gentleman's questions on pay compensation? I have the actual report. Are you speaking to the two letters that came in from American Express and the Business Roundtable, out of over 300 letters, that referred to the golden parachute compensation and the pay ratio in the Dodd-Frank bill? Are those the items you were referring to?

Mr. CLAY. Yes.

Chairman ISSA. OK, so it is two out of three hundred and some letters, 2,000 pages. OK, I thank the gentleman.

We now recognize the gentleman from Michigan, Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman, and thank you to the panelists for being here. Appreciate your candidness, appreciate your willingness to come and deal with these issues of concern.

Mr. Timmons, I thank you for your testimony. It is clear that we both share some key concerns over how OSHA is carrying out its regulatory responsibilities and how it can be dealt with, particularly as subcommittee chair for work force protections on the Education and Workforce Committee. I am interested in your comments. I will be hosting or conducting a hearing next week investigating OSHA's particular regulatory agenda and its impact on job creation, so I appreciate in your testimony you pointing out how a single company could be burdened with a $1 billion price tag for compliance costs with the proposed noise regulation.

Could you describe in more detail, if possible, what administrative or engineering controls your members would have to create in order to comply with that noise proposal?

Mr. TIMMONS. I think each company looks at what they would have to do, so I can't say specifically. But what I can say is that—and I was in one of our companies just about a month ago, and they were not aware of this particular regulation that was being considered, and they have noise abatement procedures, the little foam earplugs you have probably seen, and they actually have a medical facility on campus to ensure that—well, for many reasons, but one of the things that facility does is to make sure that those devices are working appropriately. I don't know what the cost of those are, but they are probably less than a quarter a day per worker.

And when I asked that particular company what they would have to do to get their noise level down to about 90 decibels, which is, I believe, what the regulation was calling for, that is also about the sound of a flute being played over a prolonged period of time, they nearly hit the floor when they started thinking about it and what they would have to do, and whether technology even existed to be able to do that.

So it was a stark realization on their part that the investment they would have to make would be very severe, would make them less competitive and potentially cost jobs. But I can try to get you some specific information on the components and what those components would be for representative manufacturing facilities.

Mr. WALBERG. I would appreciate that. Thank you.

Mr. Fredrich, thank you for your testimony and thank you for using your dime to come on out here; I appreciate it.

Mr. FREDRICH. You are welcome.

Mr. WALBERG. I assume that your employee lead compliance efforts are effective in preventing injuries and illnesses. Could you expand on the steps you take to ensure employee safety?

Mr. FREDRICH. We have a safety committee and it is, I think, 8 or 10 people from all over our plant. We have some management people, people who run machines, supervisors, and what we do every month is we walk around the plant, 65,000 square feet, and we look for problems. We look for areas that could cause an injury. Then we document those and then we give any changes or the fixes that are required to our maintenance people, and that is their first priority to fix that.

In addition to that, once a quarter our worker's comp carrier comes into our plant. Somebody mentioned OSHA being more of an educator. Well, the worker's comp carriers do the same thing. I mean, they are an educator, and it is always good to have somebody else look at your plant, because they see things that you overlook. It always happens.

Mr. WALBERG. And you do this voluntarily, what you are telling us?

Mr. FREDRICH. Oh, absolutely. Yes. The last thing we want to do is have somebody hurt. I mean, the worst thing that happened to us was we had one fellow cut two fingers off, and he did it by wrapping a rubber band around a safety switch on a press. So he circumvented the safety mechanism and he cut his fingers off. I mean, that was bad, but I don't know what you do to protect yourself against something like that.

But it is a big cost for us and we have a strong, strong incentive to reduce that cost because it literally costs more than our health insurance. And we have the ability to manage it, and that is the key; we can manage it and we can reduce our rating. You are familiar with the MOD ratings for manufacturers. Our MOD rating is .93. If we can get that down to 0.7 or 0.6, then our premium is down and we save money, and we can only do that by having a safe environment.

Mr. WALBERG. Do you pay out incentives? Do you pay out incentives for——

Mr. FREDRICH. We do. Absolutely. If we don't have a work-related injury, a loss time injury, we pay $15 a month cash to everybody. If we do have a work-related injury, it kind of starts over; you start at zero, then it goes to $5, then $10, and then $15.

Mr. WALBERG. Thank you.

And thanks for the extended time.

Chairman ISSA. I thank the gentleman.

The very patient gentleman from Oklahoma, Mr. Lankford, for 5 minutes.

Mr. LANKFORD. Thank you, Mr. Chairman.

Since it is lunchtime, let me start by talking about food and fiber. Can we do that? And let's talk about an agriculture question. Mr. Nassif, thank you for being here and, for all of you, thank you for being here.

Would you guess, and just give me a ballpark guess, based on the regulations that are coming down and that had been coming down onto the agricultural industry, on the effect it would have on the cost of food and also the number of jobs that are affected, based on the regulations that have happened? And you can pick any time period, the last 10 years, 5 years, whatever it may be.

Mr. NASSIF. Well, clearly, the cost of adhering to the regulations limits the amount of capital that is available for investment in technology, in conservation, in the environment, and in adding more jobs to the work force. Because agriculture is so diverse, there is no way to say what it is for agriculture. I represent the fresh produce people. We grow fresh fruits, vegetables, and tree nuts like almonds and walnuts; and each of those industries is different. We have about 300 different commodities that we represent. Each commodity is different.

And the effect on regulations and the profitability is different depending on what growing region you are from and what the climate is during that particular growing region. But I think the thing people have to understand is that for the growers the margin of profit may be 2 percent, so there is not a lot of room for that. And as I stated earlier, we don't set prices, so the more cost we have added, the less likely we are going to be competitive, which means that the retailers and the food service companies are less likely to buy our products.

Mr. LANKFORD. So would you say that the regulatory environment is increasing the number of jobs in agriculture or decreasing the number of jobs in agriculture?

Mr. NASSIF. Only administrative jobs.

Mr. LANKFORD. OK. So if you had the choice of hiring another compliance officer or hiring another person to actually handle product, which would you choose?

Mr. NASSIF. Well, we would much rather hire people to handle product, but sometimes we are forced to do the other.

Mr. LANKFORD. Right. Jobs are being created, but they are in compliance officers, basically fulfilling regulatory requirements, is what you are saying on that.

Mr. NASSIF. Yes. Big increase in employment in that sector.

Mr. LANKFORD. OK.

Just as a random question for everybody, if you had to, right now, make a decision based on the regulatory environment, to hire a person or to put a robot in that place to do it, it is an interesting thought to think. If you could just avoid all the regulations, not have to deal with all the regulations, I am just going to put a robot in that spot to do that same job, would there be a tendency among anyone to say it is almost safer to put a robot there than it is a person, because then I wouldn't have all the OSHA requirements, all the additional stuff that is added to it as well?

Mr. NASSIF. I think there is certainly a move toward increased technology because of the problems created by the regulatory burdens in hiring more people, so it is a disincentive to hire those people and an incentive to do more technology and——

Mr. LANKFORD. Just to do it in mechanized so I don't have to deal with all that regulation.

Mr. NASSIF. Yes.

Mr. LANKFORD. Were you going to say something as well, Mr. Fredrich, or someone else?

Mr. FREDRICH. We are installing a robot right now.

Mr. LANKFORD. OK. And that is somewhat just to avoid all the regulatory requirements that are there. Obviously, you have a one-time purchase for that person, then you don't have to deal with all the long-term costs and things with that, or is there some other reason for that?

Mr. FREDRICH. Productivity.

Mr. LANKFORD. OK.

Mr. FREDRICH. It is productivity.

Mr. LANKFORD. OK.

Mr. FREDRICH. But, you know, if we didn't have the robot, we would have to have two people on one press, so now we have one. But, you know, we don't get rid of that person; we hopefully have another job for him.

Mr. LANKFORD. Right.

Mr. TIMMONS. Productivity gives you the ability to enhance your operations elsewhere and hopefully hire more people.

Mr. LANKFORD. Hopefully so. Let me ask something of you. The predictability of the regulations that are coming. I would assume you don't wake up every morning, read the newspaper, and then go read the government Web site to find out new regulations are coming onboard; you have trade agencies and such that are helping you take care of that. Is there a predictable schedule that you can look at and say I know every 6 months or every year I am going to get some new list, or do they seem to come all the time? And anyone can respond to that.

Mr. ALFORD. With this administration, it is lightning speed and always a surprising group or mass of new regulations. It is wild. It is a runaway freight train.

Mr. LANKFORD. Would it help you to have some sort of predictability to say new regulations come out at a certain moment, and that way you are not having to worry about every day the rules are changing on me or the rumor the rules are changing?

Mr. ALFORD. That would be very helpful, sir.

Mr. LANKFORD. OK. For anyone else would that be helpful to you, to have some sort of predictability?

Mr. BUSCHUR. It would be tremendously helpful. In our industry, in the construction industry, we are fighting the same issues; there are rules and regulations coming out every day that you hope you are within the guidelines of, but there is no way you can practically keep up with what is happening at the speed it is happening right now.

Mr. LANKFORD. OK. And you are dealing with both State regulations, I assume, and also Federal regulations. Do you deal with Federal regulations that the State and the Federal are in conflict or they are trying to regulate the same thing or the same practice?

Mr. BUSCHUR. Absolutely.

Mr. LANKFORD. Anyone else dealing with that as well?

Mr. NASSIF. Yes, we are.

Mr. LANKFORD. OK.

Mr. TIMMONS. Sure, you always deal with that. On your question of certainty, let's look at the EPA regulations that were set 5 years ago, or 2 years ago, pardon me, and they were supposed to be in effect for a number of years, and the agency decided to reopen those regulations.

I think that is another thing to look at. If a regulation is set, it needs to be set, because, from the manufacturing sector, we try to align our businesses with the regulatory regime that we know. Now, if we are trying to look at every regulation and see what makes sense from a competitiveness standpoint, and we are going to increase competitiveness, then that makes sense. But if it is just simply to increase the regulatory threshold, that really doesn't make sense and it harms our ability to respond appropriately to the regulatory regime.

Mr. LANKFORD. Terrific. Thank you.

Mr. NASSIF. When I became president of Western Growers, one of the things I vowed to do was to be more proactive and not so reactive, because that is what agriculture had been. I can tell you I failed at that miserably, because there is so much to have to react to, so many new rules and regulations constantly, from across the board, State, Federal, local regulations, that it is impossible to be as proactive as is necessary to achieve the economic goals of an association.

Mr. LANKFORD. Terrific. Thank you. Thank you very much, gentlemen.

Chairman ISSA. I thank the gentleman.

I now recognize the ranking member.

Mr. CUMMINGS. I want to thank the chairman for yielding. Mr. Chairman, I just would like to correct the record on an important issue.

Earlier in the hearing we heard about a letter from Stanley "Goose" Stewart, a coal miner injured in the Upper Branch Mine in West Virginia. His letter was very compelling and he argued in favor of greater regulation of coal mining companies. The chairman, you made a statement, and I want to just clarify it. You said that mine safety was not raised in any of the responses the committee received. In support of this statement you entered into the record the appendix of the report your staff prepared for today's hearing.

Mr. Chairman, the fact is that one of the witnesses here today, the Mercatus Center, did criticize the proposed mining regulation in its submission to the committee. In addition, the appendix you entered into the record states on page 82 that the Business Roundtable also raised concerns with rules that require mining companies to disclose information about mine safety and health standards. So Mr. Stewart's letter was right on point.

And just for clarification sake, Mr. Chairman, you were talking to Congressman Lacy Clay and you mentioned that there were 2 of the 300 responses from the Business Roundtable that represents—but we want to keep in mind that they represent more than—and I think this was with regard to compensation, executive compensation. They represent 13 million employees, $6 trillion in annual revenue, and member companies comprise nearly one-third of the total value of the U.S. stock market. So just wanted to just for clarification sake.

Chairman ISSA. I thank the gentleman.

Mr. CUMMINGS. Appreciate it.

Chairman ISSA. And I will be brief in my closing here. Mercatus we will hear from later. The Business Roundtable, I guess maybe I missed the fact that was the group the President asked for for input from. But having said that, just briefly, Mr. Fredrich, are you ISO 9001, 9002? Do you subscribe to that?

Mr. FREDRICH. Yes. We were first certified in 2003 and then recertified in 2009.

Chairman ISSA. And that allows you to sell in Europe without the Europeans inspecting you because a voluntary standard of quality and so on? You are certified, basically, so that they don't come and secondarily inspect you the way so often other agencies here in the United States do, is that correct?

Mr. FREDRICH. The toughest inspections we have are from customers. Customers will send in their quality people and they will give us a really good exam. But then we also have internal audits and then we have the external quality audit.

Chairman ISSA. Mr. Timmons, sort of right in the mainstream of NAM, Boiler MACT, M-A-C-T, isn't it true that the EPA finding that it was an unachievable goal, asked for additional time, went to the court basically because of their failed regulatory policy? They made it a rule, then went to the Federal court trying to delay it, and eventually have been told no; essentially fix your own problem, we are not going to delay implementation of a bad law that currently can't be achieved, is my understanding? Isn't that true?

Mr. TIMMONS. That is correct.

Chairman ISSA. OK. So perhaps how do regulations block private sector job creation may not be the best, but it certainly seems that

there is one or more that are real impediments to job creation in each of your industries.

I want to thank all of you for being here today. We have a second panel that is going to start promptly at quarter to 1. I would keep you all here for round after round. I suspect that the specifics that you have been able to give here today could be enhanced many times fold. None of it was hyperbole; all of it was in fact what I thought were good responses to real questions when they were given. And for the small businesses that came here on their own dime and make sacrifices every day to make sure their employees are safe, have health care, and they get paychecks before you do, thank you again.

We stand in recess until 12:45.

[Recess.]

Chairman ISSA. The hearing will now reconvene. I would like to recognize our second panel of witnesses and thank you for your patience. Hopefully, it was as educational for you on the first panel as it was for the rest of us.

Our first witness, Mr. James Gattuso is a senior research fellow at Heritage Foundation, a research and education institution whose mission is to formulate and promote conservative public policies.

Mr. Sidney Shapiro is associate dean for research and development at Wake Forest University School of Law and vice president of the Center for Progressive Regulation.

Ms. Karen Kerrigan is the president of the Small Business and Entrepreneurship Council, an advocacy and research organization with over 100,000 dedicated members protecting over 100,000 small businesses and promoting entrepreneurship.

Dr. Jerry Ellig is senior research fellow at Mercatus Center at George Mason University, a research center dedicated to using market-oriented ideas to bridge the gap between academic ideas and the real world.

Pursuant to the rules, all witnesses will be sworn in before testifying. Would you please rise, raise your right hands?

[Witnesses sworn.]

Chairman ISSA. Let the record indicate all responded in the affirmative.

Mr. Gattuso, as you may have heard on the first round, 5 minutes for your opening statements. We realize your opening statements are much more thorough, and they will be included in the record fully. I won't cut you off exactly at 5 minutes, but I will start circling my fingers. Please.

Mr. GATTUSO. I will do my best.

Chairman ISSA. Thank you.

STATEMENTS OF JAMES GATTUSO, SENIOR RESEARCH FELLOW IN REGULATORY POLICY, THE HERITAGE FOUNDATION; SIDNEY SHAPIRO, CENTER FOR PROGRESSIVE REFORM; KAREN KERRIGAN, PRESIDENT AND CEO, SMALL BUSINESS AND ENTREPRENEURSHIP COUNCIL; AND JERRY ELLIG, SENIOR RESEARCH FELLOW, MERCATUS CENTER, GEORGE MASON UNIVERSITY

STATEMENT OF JAMES GATTUSO

Mr. GATTUSO. Chairman Issa, Ranking Member Cummings and members of the committee, thank you for the opportunity to testify today on this important topic.

The American people deserve a regulatory system that works for them, not against them; a regulatory system that protects and improves their health, safety, environment, and well being, and improves the performance of the economy without imposing unacceptable or unreasonable costs on society. Regulatory policies that recognize the private sector and private markets are the best engine for economic growth. These words come from Executive Order 12866, issued in 1993 by President Bill Clinton. The statement concludes that the regulatory system falls short of these goals. That is truer today than it was 18 years ago.

From the lighting in their homes to the volume of their television sets to the cars they buy, Americans today are facing an unprecedented tide of red tape in their lives; red tape that is increasing prices, reducing innovation, and destroying jobs.

Last fiscal year, the number and cost of new regulations imposed by Federal agencies reached unprecedented levels. Based upon reports from the Government Accountability Office, in fiscal year 2010 alone, some 43 major new rules increasing regulatory burdens were issued by Federal agencies. That is higher than any other year on record. The total annual cost for these rules, based on estimates by the regulators themselves, tops $26½ billion, the highest level since at least 1981, the earliest date for which records are available. Many more on the way.

The costs imposed by these rules vary as much as the regulations themselves. One cost, perhaps surprisingly to many, can be in terms of decreased safety. Several Members mentioned safety concerns, as they should, in the discussion during the first panel, and certainly many, many regulations are essential to preserving safety. But we shouldn't forget that safety can also be decreased by regulations; it can be a cost. I point specifically to cafe rules, fuel economy rules that have forced Americans into smaller, less safe vehicles, causing many deaths; and even airline safety, where specifically such rules as child safety seats have induced Americans to drive rather than fly, moving them to a less safe mode of transportation.

Our specific subject here today is the cost in terms of jobs. You have heard from many other witnesses how many jobs may be destroyed or not created because of particular regulations. But no businessman needs an academic study to know how regulations affect their bottom line and can stop them from hiring new workers.

A couple of points I want to stress, though. First, economic studies can only capture effects on existing industries, or at least pre-

dictable industries and technologies. The dogs that don't bark are not counted. New technologies that are stunted, new products that are never brought to market, and ideas that never are acted upon don't make it into the statistics that these are real costs of regulation.

Also, I want to point out that regulations can create jobs as well as eliminate them, but this is not always a good thing. For instance, a new regulation can, and in fact usually does, create more demand for lawyers, lobbyists, and even regulators themselves. This may increase the job rolls, but is not an increase in wealth or prosperity for society.

For the same reason, policymakers should be wary of claims about new rules creating green jobs. Green jobs can be productive, can increase wealth in society, but not if those jobs are based on artificial mandates or restrictions that are not otherwise justified. If they are justified only in terms of creating the job, they add nothing to prosperity, so that is something for policymakers to watch out for.

The bottom line: it is critical that policymakers increase scrutiny of new and existing rules to ensure that each is necessary and that costs are minimized. President Obama has recognized this and has taken a welcomed first step toward reform by announcing that he and his administration would look harder at existing rules that are already in the books. I am a little bit concerned, however, that review is not stringent enough.

In fact, if you look at the language of the Executive order issued by the President, it only asks agencies to come up with a preliminary plan for regulations to review, rather than to come up with actions directly. It is a very small first step. And the fact that it does not include independent agencies, which are some of the primary producers of new regulations and regulations on the books, is a matter of concern and a loophole in this review.

Let me just say, to followup, I am encouraged by the actions of this committee and the work in focusing attention on this important problem and in identifying and asking for information from businesses who are affected by regulation and by the public in getting information.

Last, I have several legislative proposals I think the committee should look at. Let me just list them. I think the Congress should be required to approve all new rules in order to increase accountability; I think that there should be a regulatory impact statement prepared by a new congressional regulation office to allow Congress to get more information about rules; and, last, there should be a sunset period for all rules after, say, 5 or 6 years, in order to ensure that they are doing their job and that bad rules are taken off the books.

With that, again, I want to thank you for the opportunity to testify today.

[The prepared statement of Mr. Gattuso follows:]

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CONGRESSIONAL TESTIMONY

Regulatory Impediments to Job Creation

Testimony before the Committee on Oversight and Government Reform United States House of Representatives

Thursday, February 10, 2011

James Gattuso
Senior Research Fellow in Regulatory Policy
The Heritage Foundation

Chairman Issa and members of the Committee, thank you for the opportunity to testify today on this important topic.

My name is James Gattuso. I am a Senior Research Fellow in Regulatory Policy at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

> *The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.*

This strong and concise description of sound regulatory policy is from Executive Order 12866, issued by President Bill Clinton in 1993. And his conclusion that the regulatory system falls short of what's best for the nation is even truer today than it was 18 years ago.

From the lighting in their homes, to the volume of their television sets, to the cars they buy, Americans are facing an unprecedented tide of red tape that is increasing prices, reducing innovation, and destroying jobs.

The impact of this regulation is difficult to measure precisely. Unlike direct spending, regulatory burdens imposed on businesses and consumers appear in no budget and are recorded in no ledger. However, by any reckoning, the burden is substantial and growing. This growth is not confined to one administration or political party. In fact, according to the Office of Management and Budget, regulatory costs have grown every year since 1981. The last several years of the George W. Bush administration were particularly busy ones in terms of regulatory activity.

Last year, however, the number and cost of new regulations imposed by federal agencies reached unprecedented levels. Based upon reports from the Government Accountability Office, in fiscal year 2010 alone some 43 major new rules increasing regulatory burdens were issued by federal agencies. The total annual cost for these rules, based on estimates by the regulators themselves, tops $26.5 billion, the highest level since at least 1981, the earliest date for which figures are available.[1]

Fifteen of the 43 major rules issued during the fiscal year involve financial regulation. Another five stem from the Patient Protection and Affordable Care Act adopted by Congress in early 2010. Ten others come from the Environmental Protection Agency, including the first mandatory reporting of "greenhouse gas" emissions and $10.8 billion

[1] See James L. Gattuso, Diane Katz, and Stephen A. Keen, "Red Tape Rising: Obama's Torrent of New Regulation," Heritage Foundation *Backgrounder* No. 2482, October 26, 2010.

in new automotive fuel economy standards (adopted jointly with the National Highway Traffic Safety Administration).

It should be noted that the actual cost of regulations adopted in FY 2010 is almost certainly much higher than $26.5 billion annually. As a first matter, the cost of non-economically significant rules—rules deemed not likely to have an annual impact of $100 million or more—is not calculated by agencies. Moreover, regulatory agencies did not quantify costs for 12 of the 43 economically significant rules adopted in FY 2010.

Many more are on the way. According to one estimate, the financial regulation legislation recently adopted by Congress will alone require 243 new formal rulemakings by 11 different federal agencies.[2]

A similarly large number of rulemakings will likely be required to implement the new health care law. Significant new regulation is also in the pipeline at EPA, as well as at independent agencies such as the Federal Communications Commission and the Consumer Product Safety Commission.

Overall, the latest Unified Agenda released by OMB shows that regulatory agencies have 183 more regulations in the pipeline now than they did last year, 40 of which are "economically significant"—an increase of 20 percent.[3]

The types of costs imposed by these rules vary as much as the regulations themselves. One of the most significant is the effect on jobs. A pending EPA rule on boilers, for example, threatens some 71,000 jobs related to the paper and pulp industry alone.[4] "Net neutrality" rules by the FCC is forecast to reduce employment by hundreds of thousands of jobs.[5] A recent report by the Manufacturer's Alliance projected the loss of 7.3 million jobs by 2020 from the EPA's proposed ozone rule.[6]

These figures show only part of the jobs picture, however. Economic studies can only capture effects on existing industries and technologies. The dogs that don't bark are not counted: new technologies that are stunted, new products that are never brought to market, and ideas that are never acted upon.

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[2] Davis Polk, "Summary of the Dodd–Frank Wall Street Reform and Consumer Protection Act, Enacted into Law on July 21, 2010," Davis Polk & Wardwell, LLP, July 21, 2010.
[3] Susan Dudley, "An Ambitious Regulatory Agenda," George Washington University Regulatory Studies Center, *Regulatory Policy Commentary,* December 24, 2010, at *http://www.regulatorystudies.gwu.edu/images/commentary/20101224_dudley_regulatory_agenda.pdf.*
[4] Fisher International, "Economic Impact of Pending Air Regulations on the U.S. Pulp and Paper Industry," August 2010, at *http://www.afandpa.org/pressreleases.aspx?id=1545.*
[5] Charles M. Davidson and Bret T. Swanson, "Net Neutrality, Investment & Jobs: Assessing the Potential Impacts of the FCC's Proposed Net Neutrality Rules on the Broadband Ecosystem," Advanced Communications Policy and Law Institute, New York University, June 2010.
[6] Donald A. Norman, "Economic Implications of EPA's Proposed Ozone Standard," Manufacturer's Alliance Economic Report, September 2010.

Regulations can create jobs as well as eliminate them. But this is not always a good thing. For instance, a new regulation can—and in fact usually does—create more demand for lawyers, lobbyists, and even regulators themselves. Few, however, would consider this a good thing. For the same reason, policymakers should be wary of claims about new rules creating "green jobs." If those jobs are based on artificial mandates or restrictions that are not otherwise justified, they add nothing to overall prosperity.

In the long run, total employment levels will likely be relatively constant. As the economy adjusts—according to most economists—total employment will trend toward a stable level. But to an individual American out of a job, news that in a few years the economy will achieve equilibrium may not provide much consolation. And even after that long-term leveling of employment is reached, total income and prosperity in the economy remains lower than it would otherwise be.

It is critical that policymakers increase scrutiny of new and existing rules to ensure that each is necessary and that costs are minimized. President Obama has already taken an important first step toward reform, issuing an Executive Order reiterating the obligation of regulatory agencies to carefully review new regulations and to review rules already on the books. This is a welcome step. At the same time, however, I am concerned that the initiative falls short of what is needed. For instance, although President Obama has stated that he has called for a "government-wide review" of existing rules, agencies only are required to submit preliminary plans for ongoing reviews in the future. This adds little to the review requirements that already exist in statute and prior executive orders. Moreover, President Obama's order excludes independent agencies, thus exempting some of the biggest sources of regulation.

Mr. Chairman, I would like to commend you for initiating your review of regulation by requesting input directly from over 150 research organizations and individuals,[7] as well as American businesses—who have had first-hand experience with the real burdens of regulation. Supplemented by information provided via your new website—americanjobcreators.com— your efforts promise to provide vital information as to what is and is not working in our regulatory system, as well as focus attention on this vital issue.

There are a number of legislative steps Congress can take in order to ensure proper scrutiny of new and existing rules. Among these:

1) Require congressional approval of major regulations that place new burdens on the private sector.

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[7] In response to your request, my colleague Diana Katz and I identified 20 specific regulations which we believe should be eliminated, ranging from the individual mandate for health insurance to new FCC regulation of Internet service providers. These recommendations have also been detailed in a Heritage research report issued last month. See Diane Katz, "Rolling Back Red Tape: 20 Regulations to Eliminate," Heritage Foundation *Backgrounder* No. 2510, January 26, 2011, at http://www.heritage.org/Research/Reports/2011/01/Rolling-Back-Red-Tape-20-Regulations-to-Eliminate.

Under the 1996 Congressional Review Act, Congress has the means to veto new regulations from agencies. To date, however, that authority has been used successfully only once. Under legislation introduced in the House by Congressman Geoff Davis (H.R. 10) and in the Senate by Senator Rand Paul (S. 299), the review process would be strengthened by requiring congressional approval before any major regulation takes effect. Such a system would ensure a congressional check on regulators, as well as ensure the accountability of Congress itself.

2) Require a cost analysis of all legislation imposing new regulatory burdens.

Although all proposed legislation must be scored by the Congressional Budget Office to determine likely fiscal costs, there is no similar requirement for scoring regulatory costs. Members should not be asked to vote on proposals without the best possible estimate of likely costs. All bills proposing new or expanded regulation should undergo a regulatory impact analysis analyzing and quantifying (where possible) the likely costs and benefits. This "regulatory scoring" would ideally be performed by a new "Congressional Regulation Office," similar to the Congressional Budget Office. Such a step could be taken by Congress on its own initiative and without presidential approval.

3) Establish a sunset sate for new federal regulations.

Once adopted, rules tend to be left in place, even if they have outlived their usefulness. Currently, under section 610 of the Regulatory Flexibility Act, rules that have a substantial effect on a significant number of small entities must be reviewed by the promulgating agency every 10 years. In practice, however, such review, if it occurs at all, is usually performed in a cursory manner. To ensure that substantive review occurs, regulations should automatically expire if not explicitly reaffirmed. This requirement should be applied to all rules, not just those affecting small businesses. Such "sunset" dates should also be included in legislation imposing new regulation.

Conclusion. While reforming the regulatory process is important, it is also important to note that such reforms will not by themselves solve the problem of overregulation. No set of procedural reforms will be enough to stem the regulatory tide. Ultimately, regulatory burdens will rise until policymakers fully appreciate the burdens that regulations impose on Americans, and exercise the political will necessary to limit and reduce those burdens. I hope today's hearing serves as one step towards that end.

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Chairman ISSA. I thank the gentleman.
Mr. Shapiro.

STATEMENT OF SIDNEY SHAPIRO

Mr. SHAPIRO. Thank you, Mr. Chairman.

Regulatory critics contend the cost of regulation has kept the U.S. business community from participating more fully in our Nation's economic recovery. Upon examination, however, it turns out that a focus on regulatory costs is a flawed way to examine the usefulness and necessity of government regulation, or to determine whether or not regulatory costs are hindering the Nation's economic recovery.

The focus on regulatory costs is misguided for four reasons. First, as we heard discussed in the last panel this morning, the cost of regulation in isolation proves nothing because it ignores the benefits the regulation brings to the public and the economy. The best measure of this is the OMB report submitted annually to Congress. The last one, covering the last 10 years of major Federal regulations, found total benefits of between $128 and $616 billion and costs of no more than $43 to $55 billion.

Now, this finding refers to aggregate net benefits, which means that some individual regulations may not have benefits that exceed costs. But, in our experience, this result usually results from the difficulty of monetizing regulatory benefits rather than the lack of any such benefits.

Second, retrospective studies show that industry estimates of regulatory costs submitted to agencies for purposes of rulemaking are often too high. This result should not be surprising; regulated entities have strong incentives to overstate potential costs to regulators and to Congress. As Representative Quigley pointed out, the National Association of Manufacturers had dire predictions for the Clean Air Act, none of which were borne out.

Third, a recent study on regulatory costs authored by Nicole and Mark Crane for the SBA Office of Advocacy, which claims regulation had an annual cost of $1.75 trillion in 2008, is unreliable evidence concerning regulatory costs. I discuss this study in detail in my written testimony. Let me mention only one problem. About 70 percent of the regulatory costs estimated by Crane and Crane are based largely on a decidedly unusual data source for economists, public opinion polling, the results of which Crane and Crane massage into a massive, but unsupported, estimate of the costs of economic regulation.

Because Crane and Crane have refused to make their underlying data or calculations public, apparently even withholding them from the Small Business Administration office that contracted for the study, it is difficult to know precisely how they arrived at the result that economic regulation has a cost of $1.2 trillion. Nevertheless, based on what we know, we should be wary of their claim. As mentioned, their estimate of economic regulatory costs is based on the results of public opinion polling, specifically, polls concerning the business climate of countries that has been collected in a World Bank report. The authors of the World Bank report warned that its results should not be used for exactly the type of extrapolations

made by Crane and Crane because their underlying data are too crude.

Finally, like any spending, the costs of regulation generate economic activity because the money is spent on goods and services, thereby generating jobs. As also pointed out this morning, the literature does not support the conclusion that regulation regards economic recovery. In my written testimony I describe some of the study's findings that regulation does not lead to a net job loss. One of these studies, by Resources for the Future, concludes that the claim that regulatory spending, "reduces employment in heavily polluting industries is not supported by the data." I might note that this includes petroleum refining, which was discussed this morning as being disadvantaged by regulation.

I would also like to point out that studies by Evan Goldstein, also mentioned this morning talking about pollution havens and why jobs are sent overseas, Dr. Goldstein found that the large amount of the percentage of difference in costs between manufacturing jobs here and in places like India and China are related to wages, and that only maybe 1 or 2 percent of the difference in costs between manufacturing abroad and manufacturing here can be related to regulation.

So I thank you for the opportunity to testify. Although it is clear that regulated entities do not always like regulation, this does not mean that regulation is the cause or even a contributor for economic and unemployment woes. The evidence to back up this claim is simply not there.

[The prepared statement of Mr. Shapiro follows:]

TESTIMONY OF SIDNEY A. SHAPIRO

UNIVERSITY DISTINGUISHED CHAIR IN LAW,
ASSOCIATE DEAN FOR RESEARCH AND DEVELOPMENT,
WAKE FOREST SCHOOL OF LAW
AND
MEMBER SCHOLAR, VICE-PRESIDENT
CENTER FOR PROGRESSIVE REFORM

BEFORE THE
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

HEARING ON
REGULATORY IMPEDIMENTS TO JOB CREATION
FEBRUARY 10, 2011

and injured thousands more.

This historical record suggests that regulation has brought important benefits to the country and the lack of regulation can create significant risks for Americans, including even the onset of a financial recession. When it comes to regulatory reform, it is important for Congress to look before it leaps. While reasonable regulatory oversight is a necessity in a democracy, care must be taken not to rollback or impede necessary and reasonable regulation.

Regulatory critics contend the cost of regulation has kept the U.S. business community from participating more fully in our nation's economic recovery. Based on this argument, this committee is considering how regulation might be reduced in order to lighten the burden on the business community. Upon examination, however, it turns out that a focus on regulatory costs alone is a flawed way to examine the usefulness and necessity of government regulation, or to determine whether or not regulatory costs are hindering the country's economic recovery.

Specifically, the focus on regulatory costs is misguided because:

- The cost of regulation in isolation proves nothing because it ignores the benefits that regulation brings to the public and the economy. OMB recently estimated that over the last 10 years major federal regulations with quantified and monetized costs and benefits produced total of between $128 and $616 billion—a staggering return on the total $43-$55 billion cost of these investments.

- Retrospective studies show that industry estimates of regulatory costs, submitted to agencies for purposes of rulemaking, are often too high. This result should not be surprising. Regulated entities have a strong incentive to overstate potential costs to regulators and to Congress.

- A recent study on regulatory costs, authored by Nicole and Mark Crain for the SBA Office of Advocacy, which claims regulation has an annual cost of $1.75 trillion in 2008, is unreliable evidence concerning regulatory costs for reasons I'll describe in a moment.

of which accrue to the anti-regulation side of the ledger, almost all regulations have greater economic benefit than cost.

COSTS ARE OVERSTATED

To generate cost estimates for cost-benefit analyses, agencies rely primarily on surveys of representative companies that the regulation will likely affect. Because companies know the purpose of the surveys, they have a strong incentive to overstate costs in order to skew the final cost-benefit analysis toward weaker regulatory standards.[3] Agencies must also fill in any data gaps they encounter by making various assumptions. Due to fear of litigation over the regulation, they tend to adopt conservative assumptions about regulatory costs, such that the cost assessment ends up reflecting the maximum possible cost, rather than the mean.[4]

Industry cost estimates, and therefore the cost estimates that agencies develop also do not account for technological innovations that reduce the cost of compliance and produce non-regulatory co-benefits, such as increased productivity. When companies are asked to predict which technology they will employ to comply with a particular environmental regulation, they often will point to the most expensive existing "off-the-shelf" technology available. Once the regulation actually goes into effect, however, companies have a strong incentive to invent or purchase less costly technologies to come into regulatory compliance. As a result, compliance costs tend to be less, and often much less, than the predicted costs. Moreover, the technological innovations tend to produce co-benefits unrelated to the regulation—such as increased productivity and efficiency—that the company strives to achieve

A CPR Report, *Setting the Record Straight: The Crain and Crain Report on Regulatory Costs*,[11] shows that much more is at work than that. I have attached a copy of the CPR report as an appendix to this testimony.

In areas where the OMB and Crain and Crain calculations overlap, Crain and Crain use the same cost data as OMB, but, unlike OMB, which presents regulatory costs as a range, Crain and Crain always adopt the upper end of the range for inclusion in their calculations. More significantly, Crain and Crain's calculations for the regulations not covered by OMB's report appear to be based largely on a decidedly unusual data source for economists – public opinion polling, the results of which Crain and Crain massage into a massive, but unsupported estimate of the costs of "economic" regulations. Because Crain and Crain have refused to make their underlying data or calculations public – apparently even withholding them from the Small Business Administration office that contracted for the study – it is difficult to know precisely how they arrived at the result that economic regulation has a cost of $1.2 trillion dollars, comprising more than 70 percent of the total costs in their report.

Nevertheless, their calculations inspire great skepticism. For one thing, as stated, their estimate of economic regulatory costs is based on the results of public opinion polling, specifically a poll concerning the business climate of countries that has been collected in a World Bank report. The authors of the World Bank report warn that its results should not be used for exactly the type of extrapolations made by Crain and Crain, because their underlying data are too crude.

found that there was no evidence that the states with stronger environmental standards fared less well than those with weaker environmental standards.[17] When he updated his earlier study, considering specifically the 1990-91 recession, the results were the same: "stronger environmental standards have not limited the relative pace of economic growth and development among the states over the past twenty years."[18] In particular, he notes:

> Environmentally stronger states do not experience more precipitous declines in employment during the recession. Nor do they demonstrate a higher rate of business failure. Thus, contrary to what many argue *environmentally stronger states are not more vulnerable to economic decline.*"[19]

Meyer stresses his work does not prove environmental regulation causes economic prosperity, but it does suggest that regulation did not get in the way of economic prosperity.

Another study tested the likely impacts of environmental regulations at the industry level for four heavily polluting industries: pulp and paper mills, plastic manufacturers, petroleum refiners, and iron and steel mills.[20] The authors found that "environmental spending generally does *not* cause a significant change in industry-level employment."[21] On average for all four industries, there was a net gain of 1.5 jobs for each $1 million in additional environmental spending, with a standard error of 2.2 jobs, which is an insignificant effect. Evaluating the results, and taking into account several caveats, the authors concluded, "[W]hile environmental spending clearly has consequences for business and labor; the hypothesis that such spending significantly reduces employment in heavily polluting industries is not supported by the data."[22]

42, 44-45 (Working Papers for a New Society, May/June 1981), (identifying six regulation-induced changes in the vinyl chloride industry that resulted in increased productivity).

[6] Winston Harrington, Richard D. Morgenstern, & Peter Nelson, *On the Accuracy of Regulatory Cost Estimates* 6 (Resources for the Future, Discussion Paper 99-18, 1999) (citing PUTNAM, HAYES, & BARTLETT, INC., COMPARISONS OF ESTIMATED AND ACTUAL POLLUTION CONTROL CAPITAL EXPENDITURES FOR SELECTED INDUSTRIES (Report prepared for the Office of Planning & Evaluation, U.S. Envtl. Protection Agency, 1980)), *available at* http://www.rff.org/documents/RFF-DP-99-18.pdf.

[7] OFFICE OF TECHNOLOGY ASSESSMENT, GAUGING CONTROL TECHNOLOGY AND REGULATORY IMPACTS IN OCCUPATIONAL SAFETY AND HEALTH: AN APPRAISAL OF OSHA'S ANALYTICAL APPROACH 58 (1995).

[8] Eban Goodstein & Hart Hodges, *Polluted Data: Overestimating Environmental Costs*, 8 AM. PROSPECT 64 (Nov./Dec. 1997).

[9] Harrington, Morgenstern, & Nelson, *supra* endnote 27. The Resources for the Future study notes that actual compliance costs can also be less than an agency estimates because there can be less regulatory compliance than the agency anticipates. If an agency overestimates the extent of pollution cases, the original agency estimate might have been accurate, but it turns out to be wrong because the regulatory industry does not obey the regulation to the extent that the agency predicted. *Id.* at 14-15.

[10] Sidney A. Shapiro, Ruth Ruttenberg, &James Goodwin, Setting The Record Straight: The Crain and Crain Report on Regulatory Costs (Feb. 8, 2011), available at http://www.progressivereform.org/articles/SBA_Regulatory_Costs_Analysis_1103.pdf.

[11] *Id.*

[12] See Frank Ackerman and Rachel Massey, Prospering With Precaution: Employment, Economics, and the Precautionary Principle (Aug. 2002), available at http://www.precaution.org/lib/prospering_with_precaution.20020801.pdf.

[13] Eban Goodstein, The Trade-off Myth: Fact and Fiction About Jobs and the Environment 41-67 (1999).

[14] *Id.* at. 4

[15] Ackerman and Massey, *supra* n. , at 2.

[16] Goodstein, *supra* n. , at 18.

[17] Stephen M. Meyer, Environmentalism and Economic Prosperity: Testing the Environmental Impact Hypothesis (1992), available at http://web.mit.edu/polisci/mpepp/Reports/eep.pdf.

[18] Stephen M. Meyer, Environmentalism and Economic Prosperity: An Update (Feb. 1993), available at http://web.mit.edu/polisci/mpepp/Reports/eepup.PDF.

[19] Id. 9 (emphasis in original).

[20] Richard D. Morgenstern, William A. Pizer, and Jhih-Shyang Shih, Jobs versus the Environment: An Industry-level Perspective (June 2000), Discussion paper 99-01-REV, Washington, DC: Resources for the Future, available at http://www.globalurban.org/Jobs_vs_the_Environment.pdf.

[21] *Id.* at 1.

[22] *Id.* at 25.

Setting the Record Straight: The Crain and Crain Report on Regulatory Costs

Introduction

Critics of health, safety, and environment regulation have sought to buttress the case against regulation by citing a 2010 report by economists Nicole Crain and Mark Crain called *The Impact of Regulatory Costs on Small Firms*[1] ("the Crain and Crain report"). The Crain and Crain report is the fourth in a series of reports that have been produced under contract for the Small Business Administration's (SBA) Office of Advocacy since 1995, each of which has attempted to calculate the total "burden" of federal regulations, and to demonstrate that small businesses in all economic sectors bear a disproportionate share of that burden.[2]

Among the Crain and Crain report's findings is one that has become a centerpiece of regulatory opponents' rhetoric: the "annual cost of federal regulations in the United States increased to more than $1.75 trillion in 2008."[3] This figure is several orders of magnitude larger than the estimate generated by the Office of Management and Budget (OMB)—the official estimate of the aggregate costs and benefits of federal regulations prepared annually for Congress. The 2009 OMB report found that in 2008 annual regulatory *costs* ranged from $62 billion to $73 billion.[4] The authors of the Crain and Crain report attribute this massive difference to the fact that their report considers many more rules than do the annual OMB reports, including rules with estimated costs less than $100 million, rules that were put on the books more than 10 years ago, and rules issued by independent regulatory agencies.[5]

As this report demonstrates, however, much more is at work than that. In areas where the OMB and Crain and Crain calculations overlap, Crain and Crain use the same cost data as OMB, but, unlike OMB, which presents regulatory costs as a range, Crain and Crain always adopt the upper end of the range for inclusion in their calculations, a departure that is not justified as we explain in this report. Further, Crain and Crain's calculations for the regulations not covered by OMB's report appear to be based largely on a decidedly unusual data source for economists—public opinion polling, the results of which Crain and Crain massage into a massive, but unsupported estimate of the costs of "economic" regulations. Because Crain and Crain have refused to make their underlying data or calculations public—apparently even withholding them from the SBA office that contracted for the study—it is difficult to know precisely how they arrived at the result that economic regulation has a cost of $1.2 trillion dollars, comprising more than 70 percent of the total costs in their report. Nevertheless, even based on what Crain and Crain reveal, their calculation of the cost of economic regulations is deeply flawed, as we also explain.

In addition, the OMB report accounts for an equally relevant figure that the Crain and Crain's $1.75 trillion figure simply omits: the economic benefits of regulation. OMB's 2009 recent report found that in 2008 annual *benefits* of regulation ranged from $153 billion to $806 billion.[6] And, as a series of CPR reports have explained, the OMB reports likely overestimate regulatory costs and underestimate regulatory benefits, including omitting from its calculations altogether significant benefits that happen to defy monetization.[7] In contrast, the Crain and Crain report makes no effort to account for regulatory benefits. If, for example, a regulation imposes $100 in

repeatedly warned against trying to reduce the complex relationship between these two concepts to such simplistic terms, yet this is precisely what Crain and Crain do.

- **Opaque calculations.** Contrary to academic and government norms, Crain and Crain do not reveal their data or show the calculations they used to arrive at their cost estimates. Neither is the information available from the SBA Office of Advocacy. Moreover, Crain and Crain declined to furnish their data to CPR despite several requests. As a result, it is impossible to replicate their results, a flaw so significant it would prevent the publication of their paper in any respectable academic journal.
- **Slanted methodology.** The Crain and Crain report suffers from several methodological problems, all of which tilt the results towards an overstatement of regulatory costs. These problems are itemized and explained further below.
- **Overstated costs.** To estimate the cost of non-economic regulation, Crain and Crain almost always used the agency estimates of such costs that were submitted to OMB. Although OMB presents these costs as a range, Crain and Crain always used the upper bound estimate, effectively eliminating the agencies' careful efforts to draw attention to the uncertainties in these calculations. Moreover, cost estimates are typically based on industry data, and regulated entities have a strong incentive to overstate costs in this circumstance. As discussed below, empirical studies have shown that such estimates are usually too high.
- **Peer review rendered meaningless.** The peer review process used by the SBA Office of Advocacy does not support the reliability of the report. Only two people examined the document. The authors ignored a significant criticism raised by one of the two reviewers concerning their estimate of economic regulatory costs. As for the second person, the entire review consisted of the following comments: "I looked it over and it's terrific, nothing to add. Congrats[.]"[9]

For the reasons that follow, we conclude that the Crain and Crain report is sufficiently flawed that it does not come close to justifying regulatory reform efforts, such as the REINS Act,[†] which seek to limit protection of people and the environment. If Crain and Crain had used a more straightforward and generally accepted methodology, they likely would have reached a figure that was several orders of magnitude smaller. And, if Crain and Crain had properly considered regulatory benefits, they likely would have found that regulation is a net economic plus for society. Such findings, however, would not comport with the political agenda of the SBA's Office of Advocacy or of the opponents of regulation in general.

[†] Regulations from the Executive in Need of Scrutiny (REINS) Act, H.R. 10, 112th Cong. (2011). Under this bill, no new "economically significant" regulations would take effect unless Congress affirmatively approved the regulation within 90 days of receiving it, by means of a joint congressional resolution of approval, signed by the President. For more information on the REINS Act, see Sidney Shapiro, *The REINS Act: The Conservative Push to Undercut Regulatory Protections for Health, Safety, and the Environment* (Ctr. for Progressive Reform, Backgrounder, 2011), *available at* http://www.progressivereform.org/articles/CPR_Reins_Act_Backgrounder_2011.pdf.

interpreted the RQI as measuring how friendly a country is to business interests.[13] The World Bank researchers did not intend for the RQI to be used as a proxy measure for regulatory burden or as a tool for critiquing a particular country's regulatory stringency.[14] Nevertheless, Crain and Crain use the RQI in precisely this fashion.

As the World Bank report explains, the RQI is based on public opinion polling, not quantitative data. It is derived from a composite of 35 opinion surveys that asked questions about the regulatory climate of approximately 200 countries.[15] Given its subjective origins, the World Bank researchers responsible for the RQI designed it with a few limited applications in mind—namely, to make meaningful cross-country comparisons as well as to monitor a single country's progress over time. At the same time, these researchers strongly caution against using the RQI for developing specific policy prescriptions in particular countries.[16]

Crain and Crain provide no justification defending their use of the RQI to estimate regulatory costs, nor do they ever acknowledge the myriad theoretical or empirical problems with calculating such costs based on public opinion polling. Significantly, one of the peer reviewers of the Crain and Crain report raised this objection, stating "I am concerned that the index may not measure what the authors say it measures, and even if it does, it may overstate the costs of regulation when used in conjunction with the other measures."[17] The authors do not appear to have revised the report in response to this comment.

As noted above, the Crain and Crain report uses the RQI, which the authors have converted into a proxy measure for a country's regulatory stringency, as the main variable in their formula for calculating the cost of a country's economic regulations—that is, the supposed reduction in that country's GDP caused by the regulations. The authors do not explain how they devised this formula, nor do they provide any of the underlying data, calculations, and assumptions that they used to devise it. Consequently, no one can verify whether or not the formula provides a reasonable model of reality, nor can anyone verify their calculations.

Using this formula, Crain and Crain calculate the loss in GDP the United States suffers because of economic regulation. It is unclear whether Crain and Crain calculate the loss in GDP as compared to the country with the highest RQI score or whether they calculate the loss in GDP attributed to all regulation. The latter baseline would reflect the GDP in a hypothetical United States that had no economic regulations. Whichever baseline they use, Crain and Crain thus conclude that the cost of economic regulations in the United States in 2008 was $1.236 trillion, "as reflected in lost GDP."[18]

Crain and Crain do not clearly define the category of "economic regulations," other than to note it is broadly inclusive.[§] The lack of a clear definition opens up the possibility that the category of "economic regulations" also includes the other categories of regulations identified by Crain and Crain. If, for example, this category includes some environmental regulation costs, those costs are also the subject of a separate calculation in the report. This would mean that some of

[§] The report indicates that the category of economic regulations is broad enough to include "a wide range of restrictions and incentives that affect the way businesses operate—what products and services they produce, how and where they produce them, and how products and services are priced and marketed to consumers." CRAIN & CRAIN, *infra* endnote 1, at 17.

cost-benefit analyses that EPA produced when developing the regulations. Based on this data, Crain and Crain find that the total cost of environmental regulations in 2008 was $281 billion,[23] which is 16 percent of the total regulatory costs according to their estimate of total costs.

To generate cost estimates for its cost-benefit analyses, EPA primarily relies on surveys of representative companies that the regulation will likely affect. Because companies know the purpose of the surveys, they have a strong incentive to overstate costs in order to skew the final cost-benefit analysis toward weaker regulatory standards.[24] Agencies must also fill in any data gaps they encounter by making various assumptions. Due to fear of litigation over the regulation, they tend to adopt conservative assumptions about regulatory costs, such that the cost assessment ends up reflecting the maximum possible cost, rather than the mean.[25]

Industry cost estimates—and therefore the cost estimates that EPA develops-- do not account for technological innovations that reduce the cost of compliance and produce non-regulatory co-benefits, such as increased productivity. When companies are asked to predict which technology they will employ to comply with a particular environmental regulation, they often will point to the most expensive existing "off-the-shelf" technology available. Once the regulation actually goes into effect, however, companies have a strong incentive to invent or purchase less costly technologies to come into regulatory compliance. As a result, compliance costs tend to be less, and often much less, than the predicted costs. Moreover, the technological innovations tend to produce co-benefits unrelated to the regulation—such as increased productivity and efficiency—that the company strives to achieve in any event. Given these co-benefits, only a portion of the innovative technology's costs can fairly be counted as compliance costs.[26]

As the following chart indicates, retrospective studies of regulatory costs find that the initial cost estimates are often too high.

Retrospective Studies of Regulatory Costs

Study	Subject of Cost Estimates	Results
PHB, 1980[27]	Sector level capital expenditures for pollution controls	– EPA overestimated capital costs more than it underestimated them, with forecasts ranging 26 to 126% above reported expenditures
OTA, 1995[28]	Total, annual, or capital expenditures for occupational safety & health regulations	– OSHA overestimated costs for 4 of 5 health regulations, with forecasts ranging from $5.4 million to $722 million above reported expenditures
Goodstein & Hedges, 1997[29]	Various measures of cost for pollution prevention	– Agency and industry overestimated costs for 24 of 24 OSHA & EPA regulations, by at least 30% and generally by more than 100%
Resources for the Future, 1999[30]	Various measures of cost for environmental regulations	– Agency overestimated costs for 12 of 25 rules, and underestimated costs for 2 rules

OMB report to Congress, provides the total cost of all occupational safety and health regulation issued since 2001.

The cost estimate from the 2009 OMB report to Congress is based on a simple aggregation of the cost-benefit analyses that OSHA produced when developing these regulations.[36] As discussed above, the cost assessments generated as part of these cost-benefit analyses greatly overstate the costs of regulations, since the agencies that produce them rely on industry for estimates of compliance costs, adopt conservative assumptions to fill in data gaps, and fail to account for innovation.

The Johnson study likewise suffers from several flaws, leading it to overestimate these regulatory costs. The study begins by aggregating the agency-produced cost-benefit analyses for all of OSHA rules issued before 2001.[37] As just noted, these costs estimates are overstated. Nevertheless, the Johnson study then inflates OSHA's cost estimates by multiplying the total of all of the estimates by 5.5. According to Johnson, using the multiplier is necessary to account for the costs of all of OSHA's non-major regulations—since OSHA does not perform cost-benefit analyses for these regulations—and for *fines* levied for violations of any OSHA standards.[38] In other words, the Johnson study assumes that for every dollar industry spends on compliance with OSHA's major rules, it spends $5.50 on compliance with non-major regulations and on fines for violations of existing OSHA standards.

We see no justification for counting the fines that companies pay for violating regulatory standards as regulatory costs. Instead, these are the costs of *choosing* to break the law. That is, the fines would never have occurred if the firms had not chosen to disobey the law. Under this logic, mass lawbreaking raises regulatory costs, enabling regulatory opponents to argue that we need to reduce regulation because of these high regulatory costs.

The Johnson study took the multiplier of 5.5 from a 1996 study by Harvey James.[39] The James study uses an unpublished and otherwise unavailable 1974 estimate prepared by the National Association of Manufacturers (NAM) of the per-firm cost of compliance with OSHA regulations.[40] Because the report is unavailable, it cannot be checked for accuracy. As we related earlier, industry estimates of regulatory costs are suspect because of the political incentive to inflate such costs. Nevertheless, the Crain and Crain report incorporate the Johnson study without any discussion of this significant limitation in the data.

Homeland Security Regulation Costs

To calculate the cost of all homeland security regulations, the Crain and Crain report again relies on the 2009 OMB report to Congress,[41] which is based on the cost-benefit analyses that the Department of Homeland Security produced when developing its regulations.[42] The cost assessments provided in these cost-benefit analyses are overstated for all the reasons stated above: industry-supplied estimates of compliance estimates; conservative assumptions to fill in data gaps; and failure to account for innovation.

Endnotes

[1] NICOLE V. CRAIN & W. MARK CRAIN, THE IMPACT OF REGULATORY COSTS ON SMALL FIRMS (2010) (This report was developed under a contract with the Small Business Administration's Office of Advocacy), *available at* http://www.sba.gov/sites/default/files/rs371tot.pdf.

[2] For the three earlier reports, see W. MARK CRAIN, THE IMPACT OF REGULATORY COSTS ON SMALL FIRMS (2005) (This report was developed under a contract with the Small Business Administration's Office of Advocacy), *available at* http://archive.sba.gov/advo/research/rs264tot.pdf; W. MARK CRAIN & THOMAS D. HOPKINS, THE IMPACT OF REGULATORY COSTS ON SMALL FIRMS (2001), *available at* http://archive.sba.gov/advo/research/rs207tot.pdf; THOMAS D. HOPKINS, PROFILES OF REGULATORY COSTS (1995), *available at* http://archive.sba.gov/advo/research/rs1995hoptot.pdf.

[3] CRAIN & CRAIN, *supra* endnote 1, at 6 (2009 dollars).

[4] OFFICE OF MGMT & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, 2009 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES 3 (converted from 2001 to 2009 dollars), *available at* http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/2009_final_BC_Report_01272010.pdf [hereinafter 2009 OMB Report]. The Regulatory Right-to-Know Act requires OMB to produce a report every year that, among other things, calculates the annual cost of major regulations. Treasury and General Government Appropriations Act of 2001 §624, Pub. L. 106-554, 31 U.S.C. §1105 note.

[5] CRAIN & CRAIN, *supra* endnote 1, at 3-5.

[6] 2009 OMB Report, *supra* endnote 4, at 3 (converted from 2001 to 2009 dollars).

[7] *See, e.g.*, Sidney Shapiro et al., *CPR Comments on Draft 2010 Report to Congress on the Benefits and Costs of Federal Regulations* 16-19 (App. A, Pt. C.) (2010), *available at* http://www.progressivereform.org/articles/2010_CPR_Comments_OMB_Report.pdf; Rena Steinzor et al., *CPR Comments on Draft 2009 Report to Congress on the Benefits and Costs of Federal Regulations* 16-19 (App. A, Pt. C.) (2009), *available at* http://www.progressivereform.org/articles/2009_CPR_Comments_OMB_Report.pdf; Amy Sinden & James Goodwin, *CPR Comments on Draft 2008 Report to Congress on the Benefits and Costs of Federal Regulations* 5-8 (2008), *available at* http://www.progressivereform.org/articles/2008_Comments_OMB_Report.pdf. For all of the comments on OMB's annual reports to Congress on the benefits and cost of federal regulation produced by CPR Member Scholars and staff, see Ctr. for Progressive Reform, *OMB Reports on the Costs and Benefits of Regulation*, http://www.progressivereform.org/OMBCongress.cfm (last visited Feb. 5, 2011).

[8] For examples of instances in which anti-regulatory critics have cited the Crain and Crain report and its conclusions, see, e.g., James L. Gattuso, Diane Katz, & Stephen A. Keen, *Red Tape Rising: Obama's Torrent of New Regulation* (Heritage Foundation, Backgrounder No. 2048, 2010) ("According to a report recently released by the Small Business Administration, total regulatory costs amount to about $1.75 trillion annually . . . ."), *available at* http://thf_media.s3.amazonaws.com/2010/pdf/bg2482.pdf; Sen. Mark R. Warner, Op-Ed, *To Revive the Economy, Pull Back the Red Tape*, WASH. POST, Dec. 13, 2010 ("According to the U.S. Small Business Administration, the estimated annual cost of federal regulations in 2008 exceeded $1.75 trillion."), *available at* http://www.washingtonpost.com/wp-dyn/content/article/2010/12/12/AR2010121202639.html?hpid=opinionsbox1; Press Release, U.S. Chamber of Commerce, U.S. Chamber Calls on Federal and State Lawmakers to Stem the Growing Tide of Excessive Regulation (Oct. 7, 2010) ("Donohue cited statistics from the Small Business Administration's Office of Advocacy estimating the total cost of federal regulations at $1.75 trillion."), http://www.uschamber.com/press/releases/2010/october/us-chamber-calls-federal-and-state-lawmakers-stem-growing-tide-excessive (last visited Feb. 1, 2011).

[9] OFFICE OF ADVOCACY, SMALL BUSINESS ADMINISTRATION, INFORMATION QUALITY PEER REVIEW REPORT FOR THE IMPACT OF FEDERAL REGULATORY COSTS ON SMALL FIRMS 4 (2010) (Bob Litan's peer review), *available at* http://www.sba.gov/sites/default/files/files/TheImpactofFederalRegulatoryCostsonSmallFirmsPRFY2010.pdf.

[10] Telephone Interview with Radwan Saade, Regulatory Analyst, Small Business Administration, Office of Advocacy, Office of Economic Research (Jan. 11, 2011).

[11] CRAIN & CRAIN, *supra* endnote 1, at 18-25. The RQI was developed as part of the World Bank's Worldwide Governance Indicators project, which seeks to establish a variety of indexes for measuring countries' governance and institutional quality. *See* Daniel Kaufmann et al., *Governance Matters VIII: Aggregate and Individual Governance Indicators 1996–2008* at 2 (The World Bank, Development Research Group, Macroeconomics and

[34] CRAIN & CRAIN, *supra* endnote 1, at 31 (2009 dollars).
[35] *Id.*
[36] 2009 OMB Report, *supra* endnote 4, at 11 (Table 1-2).
[37] Joseph M. Johnson, *A Review and Synthesis of the Cost of Workplace Regulations*, *in* CROSS-BORDER HUMAN RESOURCES, LABOR, AND EMPLOYMENT ISSUES 433, 453-54, 466 (Table 10) (Andrew P. Morriss & Samuel Estreicher eds., 2005).
[38] *Id.* at 455.
[39] HARVEY S. JAMES, JR., ESTIMATING OSHA COMPLIANCE COSTS 10-13 (Ctr. for the Study of Am. Bus., Policy Study No. 135, 1996).
[40] *Id.* James compared the NAM estimate to cost-benefit estimates produced by OSHA. Since the NAM estimate was approximately 5.5 times greater than the aggregate value of OSHA's cost-benefit analyses, he assumes he was justified using a 5.5 multiplier. *Id.* James did not cite an original source for the numbers that he derived from the NAM estimate. He merely cited a book by Robert S. Smith in which the NAM estimate was featured in a table. *Id.* at 4. There is no indication in James' report that he read or made any independent attempt to evaluate the accuracy of the NAM report.
[41] CRAIN & CRAIN, *supra* endnote 1, at 31.
[42] 2009 OMB Report, *supra* endnote 4, at 17-18.
[43] CRAIN & CRAIN, *supra* endnote 1, at 29 (2009 dollars).
[44] *Id.* at 28.
[45] *Id.* at 29.
[46] *Id.* at 29.

Chairman ISSA. I thank the gentleman.
Ms. Kerrigan.

STATEMENT OF KAREN KERRIGAN

Ms. KERRIGAN. Good afternoon, Chairman Issa, Ranking Member Cummings, and members of the committee. We appreciate the opportunity to be part of this hearing today and we thank you for your leadership in drawing attention to the issue of regulatory impediments to job creation.

Over the past several years, the regulatory pendulum has swung in a direction that is of great concern to small businesses. During the most challenging period of the recession, where business owners were experiencing very weak sales, tight credit, along with other competitive business pressures, Washington churned out an array of costly policies that served to compound the poor competence and outlook that was so pervasive in the small business community. The fear associated with economic stability, along with a highly active government where such actions create uncertainty and new costs, has not been conducive to investment and job creation.

Now, with some improvement in the economy, there are signs the business outlook is also improving, somewhat. Certainly, the new tone and recent initiatives from the White House, including the new regulatory strategy, is a welcome sign, but we must remember that the regulatory agencies will remain highly active and in areas with economy-wide impact. For example, they are at work implementing the new health care law, which many small business owners are concerned about with respect to its cost.

There are other significant regulations and activities underway at the EPA, the Department of Labor, and other agencies. So given the fact that existing regulatory initiatives are in motion and small businesses remain concerned about their costs, they will also remain skittish about hiring. They have real concerns about direct and indirect costs associated with these regulations that are currently in the pipeline.

I have noted in my testimony the specific concerns about the new health care law, the Affordable Care Act, both the known and the unknowns that will impact hiring decisions in the short- and long-term. With respect to the cost of energy, business owners are worried about gas and electricity prices. Along with new EPA regulations that will raise prices, they see what is occurring with offshore drilling bans, delayed permits, and how various players in our energy industry are being affected by the Federal Government switching course on production projects, which will affect the supply and price of energy. I also would mention that this will affect the many small players that operate in the energy industry and the thousands of small businesses whose livelihoods are dependent upon a vibrant energy sector.

Over at the Department of Labor there is a departure away from helping businesses comply with the law toward an approach that seems more focused on generating complaints and grievances and collecting penalties and fines. The Department's new Plan/Protect/Prevent regulatory initiatives has the potential to add vast amount of paperwork and time-consuming work for small businesses.

So as a small business owner, you will not only continue to look at the uncertainty of the economy; you are also looking at new regulation and costs that will permeate your entire business: labor, energy, financial services, the costs and availability of credit and capital, the costs of raw materials and supplies, health coverage, and a boatload of new paperwork. And this is on top of a regulatory framework that is already burdensome for small businesses. And make no mistake, small businesses are disproportionately impacted by regulation. This has been documented by the fine work and the peer reviewed work of the Small Business Office of Advocacy, showing that the per employee cost of regulation for small business is 36 percent higher than for larger firms.

The cumulative cost of regulation is putting U.S. businesses at a competitive disadvantage. Particularly in this tough economic period, it is deterring job creation. President Obama wants to make the United States the best place in the world to do business, and we do share that goal. But the United States will not maintain or improve its status under the current regulatory approach. So we look forward to working with the committee and Congress on solutions to improve the regulatory system and help small businesses do what they do best, and that is to innovative, add value, and create jobs. Thank you.

[The prepared statement of Ms. Kerrigan follows:]

"Regulatory Impediments to Job Creation"

Testimony of

Karen Kerrigan
President & CEO
Small Business & Entrepreneurship Council

February 10, 2011

Before the

Committee on Oversight and Government Reform
United States House of Representatives

The Honorable Darrell Issa, Chairman
The Honorable Elijah Cummings, Ranking Member

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Chairman Issa and Ranking Member Cummings, the Small Business & Entrepreneurship Council (SBE Council) is pleased to provide testimony today regarding regulatory impediments to job creation. Our nation's small business owners and entrepreneurs are especially impacted by the burden and cost of regulation, and we are pleased that both Congress and the White House have committed to identifying regulations that impede job creation and small business growth. SBE Council looks forward to working with the House Committee on Oversight and Government Reform on solutions and reforms that accelerate job creation, and encourage investment and entrepreneurship.

My name is Karen Kerrigan, President & CEO of SBE Council, a nonpartisan, nonprofit advocacy, research and training organization dedicated to protecting small business and promoting entrepreneurship. With nearly 100,000 members and 250,000 small business activists nationwide, SBE Council is engaged at the local, state, federal and international levels where we collaborate with elected officials, policy experts and business leaders on initiatives and policies that enhance competitiveness and improve the environment for business start-up and growth.

Currently, business owners remain on edge regarding economic conditions. Uncertainties continue to nag entrepreneurs, and the slow recovery has obviously hampered job creation in the small business sector. A February 4, 2011 report by Gallup's Chief Economist Dennis Jacobe, which analyzed a fourth quarter 2010 Wells Fargo/Gallup Small Business Survey, showed that 42 percent of small business owners hired fewer workers than they needed in 2010. According to the survey, 79 percent remain worried that revenues or sales won't be enough to justify additional employees and 70 percent are concerned about cash flow and their ability to make payroll. In addition, 51 percent are worried about the cost of health care.

While worries about sales and sufficient cash flow remain roadblocks to hiring for small business, government regulation is also a key concern.

In a February 3, 2011 Career Builder survey of 1,350 small businesses, 27 percent of respondents said that government regulation is an impediment to hiring. The cost of health insurance (50 percent) and access to credit (33 percent) were the other chief concerns. (In this survey, 21 percent of small

businesses said they plan to hire full-time employees in 2011, up from 20 percent in 2010.)

On top of tough economic conditions, entrepreneurs are truly alarmed by the tidal wave of new federal government regulations that have advanced or been proposed over the past two years. Many business owners are still trying to figure out what the new health care and financial overhaul laws mean for their costs and business operations. Most believe that costs will go up and there will be unintended consequences that impact their firms.

They are concerned about proposed regulations that are in the pipeline at the Department of Labor, Environmental Protection Agency and other agencies, which they believe will impose direct costs on their firms, add to business costs, and constrain private sector investment. Without robust investment by private sector businesses, revenues and sales are hurt. Such is the interdependency of our economy, and small businesses are often hurt the most by the unintended consequences of regulation.

America's small business owners are disproportionately impacted by regulation. The U.S. Small Business Administration's Office of Advocacy has reported that the per-employee cost of federal regulation has reached staggering levels. Their most recent regulatory impact study found that in 2008, the per-employee regulatory cost for small businesses with fewer than 20 employees was $10,585 – compared to $7,755 for firms with more than 500 employees.

Regulation of big business also impacts small firms. The threat of new regulation spawns uncertainty for larger enterprises too, leading to a pull back in investment, which not only hurts innovation and job growth but the amount of business that is conducted with entrepreneurs. The findings of a Business Roundtable report ""Mutual Benefits, Shared Growth: Small and Large Companies Working Together," demonstrate the close economic ties between small and large businesses. U.S.-parent operations of the typical U.S. multinational buys goods and services from more than 6,000 American small businesses; buys a total of more than $3 billion in inputs from these small-business suppliers; and relies on these small-business suppliers for more than 24 percent of its total input purchases, according to the report. In sum, small businesses are critically important partners with large multinationals. Regulations that impose requirements, mandates and new

costs on big business, affect the bottom-line health of small businesses – as suppliers *and* consumers.

As Committee members are aware, state and local governments superimpose an array of regulations over and above those that exist at the federal level. The states vary widely in terms of regulatory scope and costs imposed. For example, a September 2009 analysis "Cost of State Regulations on California Small Business Study" conducted by Varshney and Associates in conjunction with the California State University of Sacramento College of Business Administration, found the total cost of regulation to be $492.994 billion for the state. So, regulation comes from a variety of government entities, and small businesses experience more hardship in dealing with the cumulative impact.

Mounting regulatory costs from all levels of government are taking their toll on small businesses. With access to capital and credit still tight, along with higher energy and health coverage costs in the picture, small business owners either remain skittish about hiring or lack the resources they need to do so. Of course, this is against the backdrop of a fragile economic recovery. The prospect of additional regulatory burdens and costs drive greater uncertainty. Job creation does not flourish in such an environment.

That is why SBE Council is encouraged about President Obama's new regulatory reform strategy. We hope this initiative leads to meaningful relief for small businesses, and the spirit of this effort carries over to regulations currently in the pipeline, and those that will be proposed as part of the new health care and financial overhaul laws. The President's directive includes several steps to re-engage and strengthen the voice of small business in the rule making process, including a reminder to government agencies about their existing obligation to small business when new regulations are proposed. We look forward to working with the White House on ways to go about streamlining the regulatory process, identifying outmoded or duplicative regulations, improving the effectiveness of regulations, and lessening burden on small business.

Of course, the small business community was pleased to see the recent moves by OSHA to reexamine its Proposed Interpretation Regarding Noise Exposure and its record-keeping rule on work-related musculoskeletal disorders so it can receive additional input from small business. This just goes to show that when the White House puts a spotlight on the regulatory

process, and acknowledges that regulations impact the economy and job growth, such leadership can make a difference.

Areas of Concern

The weak economy has restrained hiring in the small business sector. The collective effect of regulatory activity across the federal government has also curbed confidence and business owner outlook. Hopefully, President Obama's new regulatory strategy will improve the policy environment. However, key areas of regulatory activity will continue to cause uncertainty for small business owners. Proposed regulations in the pipeline will have a direct cost impact on their firms. In addition, small businesses that are dependent upon the vigor of specific industries – like the energy sector, for example – share deep concerns about their survivability due to regulatory activity not favorable to energy production and investment in the United States.

Energy and the EPA: The general regulatory thrust of the Administration with regard to the treatment of our traditional and predominant energy sources will lead to less energy, higher energy prices, the disincentive to manufacture in the U.S., and job loss. Caps and restrictions are being imposed on how much America can use and produce, which will drive costs higher. Unfortunately, small businesses and their workforce will bear the brunt of higher costs and job loss if certain initiatives at the Environmental Protection Agency (EPA) move forward.

From EPA's set of rules on electric power generators to greenhouse gas (GHG) regulation, to its reconsideration of the National Ambient Air Quality Standards for Ground-Level Ozone to "Boiler MACT" industrial emission standards, this one agency alone has the potential to undermine the economic recovery while putting our businesses at a competitive disadvantage in the global marketplace. Energy drives business and the economy – it all starts with energy. Higher prices for all forms of energy will mean less capital for jobs and investment. If it costs more to make things here in the U.S., investment and jobs will continue to move overseas.

Energy Development and Production: The U.S. has been blessed with abundant natural resources to support our growing energy needs. Unfortunately, the oil and natural gas sector is getting mixed signals from the federal government in regard to the future of offshore drilling and

development in general. More than 4 million jobs in small businesses are supported by the oil and natural gas industry, according to the American Petroleum Institute (API) but new restrictions and general uncertainty threaten these businesses and their workforce. Conversely, hundreds of thousands of new jobs can be created if the federal government develops a more rational and stable policy toward domestic energy development.

Patient Protection and Affordable Care Act (PPACA): During the debate over PPACA, the new health care law was portrayed as an effort to reduce health coverage costs. But the early outcomes of its implementation show rising premiums, confusion over the grandfather rule, unknowns regarding what type of plans will be available once regulations fully take effect, and serious concern about the employer mandate. New compliance mandates (expanded 1099 and health premium reporting) will drive costs higher, and there is fear that new regulations will curtail the availability of what have been affordable choices in the marketplace.

SBE Council did not support PPACA's passage. We have long advocated an approach that encourages competition, leads to more affordable prices and expands upon what is working in the marketplace (like Health Savings Accounts). Business owners' concerns about the resources they will need to expend to comply with the law, along with their view that health coverage costs will continue to increase under PPACA (as a result of tax increases and additional regulation), add to their general uncertainty about labor costs moving forward. PPACA also establishes a threshold for when the employer mandate kicks in, which may have the effect of retarding job growth.

Federal Government Procurement: Recent actions and proposals by the Obama Administration have the potential to set small business owners back in their efforts to bid on and access government contracts. For small businesses that currently operate successfully in the federal government marketplace, the following new rules and proposed initiatives will undercut their ability to compete, which will lead to job loss in these firms.

Project Labor Agreements (PLAs): In April 2010, President Obama finalized Executive Order 13502, which encourages and authorizes the use of union-only PLAs on federal construction projects. Union-only PLAs restrict competition by requiring that a contract be awarded only to companies who agree to collective bargaining and union hiring. Most small

to mid-size firms can't compete under such a scenario. Federal government procurement rules require a competitive bidding process, and PLAs run counter to the rules of fairness, transparency and best value for taxpayers.

"High Road Initiative": The Obama Administration has been working on an initiative that would grant competitive advantage to government contractors whose salaries and benefits meet wage and benefit standards established by the federal government. Such standards could be higher than the norm offered by small businesses, which would put small contractors at a competitive disadvantage in the federal procurement space. Taxpayer costs may also escalate. Small business stakeholders have had little input into the initiative, but they need to if the Administration moves forward as it will have an impact on the jobs that small government contractors provide.

3 Percent Withholding Mandate: The mandate, advanced as part of Section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 (P.L. 109-222), will increase government costs and bureaucracy at all levels (local, state and federal); raise costs for taxpayers; and restrict cash flow for small firms. If not repealed, small contractors will find it more difficult to compete for contracts, which threaten jobs in this sector.

The Federal Government and America's Workplaces:

Plan/Prevent/Protect: The U.S. Department of Labor (DoL) asserts it does not have enough resources to ensure that businesses are complying with all federal workplace regulations. Therefore, they are embarking on a "Plan/Prevent/Protect" regulatory initiative which, according to their words, "Employers and others must 'find and fix' violations — that is, assure compliance — before a Labor Department investigator arrives at the workplace." The new regulatory program will require businesses and other regulated entities to develop extensive, time-consuming plans and internal processes with their employees that will serve as a "check" for DoL on how and whether businesses are complying with the law.

The initiative involves several agencies under DoL's auspices including the Wage and Hour Division (WHD), the Occupational Safety and Health Administration (OSHA), the Office of Federal Contract Compliance Programs, the Mine Safety and Health Administration, and the Employee Benefits Security Administration. Each agency will propose rules that require businesses to develop programs to comply with the law, and submit

them to DoL enforcement agencies. For example, as part of "Plan/Protect/Prevent" WHD is expected to propose a requirement that employers provide workers with information about how their pay is calculated, how they develop job classifications, document the job classifications (identifying who is "exempt" or an independent contractor and why), and hold training sessions to make sure everyone understands the differences in these classifications. For small businesses, the totality of the agency-wide Plan/Protect/Prevent program would be a significant burden – if not a nightmare.

Shift at DoL: A robust change has been underway at DoL. The Wage and Hour Division (WHD) budget has been increased to hire 288 new inspectors (which has already grown from 731 inspectors in 2009, to 894 in Q1 in 2010). Other budget features include the addition of 130 safety and health inspectors, 25 whistle-blowers, and 20 full-time employees to "restore" OSHA's rule-making capabilities. Certainly, we want the DoL to have the staff and resources it needs to do its job, but we are concerned that the department will move further away from constructive engagement and helping businesses comply with the law toward encouraging employees to file complaints and grievances.

"Bridge to Justice": The DoL has recently implemented a new partnership with the American Bar Association (ABA) that will refer workers who call to report (or ask questions about) alleged wage and hour violations, or those involving the Family and Medical Leave Act (FMLA), to ABA-sanctioned lawyers. A toll-free number will be provided to individuals, which will connect them to a network of lawyers. The WHD says it does not have the staff resources to review all the incoming complaints, so it has called on the ABA for assistance. Small business owners are very concerned about this new hotline-to-a-lawyer program in that it may very well amount to a feeder system for legal action against business. Dealing with such inquiries by a lawyer will be time consuming and expensive, particularly if a small business owner is forced to hire legal representation. High legal costs can break a small firm. No doubt many small business owners will settle these claims (even if innocent).

Dodd-Frank Financial Overhaul Legislation

New regulations being proposed (and to be proposed) under the auspices of Dodd-Frank have the potential to further restrict access to, and raise the cost

of, capital and credit for small business owners. Proposed Federal Reserve rules regarding interchange fees and forthcoming Consumer Financial Protection Bureau (CFPB) regulations, for example, could make a currently challenging problem much worse for small business owners. Without access to capital and credit, or if costs increase, small businesses will remain reluctant to expand their firms and hire. Small business owners remain unsure as what the financial overhaul law will mean to their firms, although they are beginning to see new monthly fees on bank checking accounts and are being told that changes will occur in the cost and availability of financial services they currently use. Such uncertainty adds to the general sense that it remains a risky time to hire.

Conclusion

As noted previously in my testimony, SBE Council is pleased that the Administration will conduct a comprehensive review of federal regulations. We are pleased that the Committee is hosting this hearing today to shed light on burdensome regulation and its effect on job creation and healthy economic growth. With Congress and the White House both focused on this important issue, SBE Council is hopeful that the efforts will lead to common ground -- particularly on reforms that will place a check on federal regulators, and institutionalize measures that require agencies to more carefully review the cost and impact of their actions on the economy, small businesses and job creation.

Chairman Issa and Ranking Member Cummings, SBE Council appreciates the opportunity to provide input to the Committee. We look forward to providing solutions that will help small businesses create jobs and move our economy back to strong levels of growth. Thank you for your leadership.

Chairman ISSA. Thank you.
Mr. Ellig.

STATEMENT OF JERRY ELLIG

Mr. ELLIG. Thank you, Chairman Issa, Ranking Member Cummings, members of the committee. Thank you for the opportunity to testify today. My name is Jerry Ellig. I am a senior research fellow at the Mercatus Center at George Mason University. I have also served in two out of three branches of the U.S. Government; I was a senior economist at the Joint Economic Committee on Capitol Hill some years ago and served as a deputy director of the Office of Policy Planning at the Federal Trade Commission.

I don't envy the members of this committee or staff of this committee trying to grapple with this issue. You have recently received about 2,000 pages of submissions in response to Chairman Issa's initial requests, and it looks like more is on the way via the Web site. You have already heard a lot of conflicting claims, and you are going to hear more conflicting claims. You are going to hear conflicting claims from advocates who say that regulation is all benefit and no cost, and you are going to hear claims from people who say that regulation is all cost and no benefit. Particularly the committee staff, I want to say, having been in government, I have walked a mile in your moccasins and I feel your pain.

You have heard a lot of conflicting claims. You will hear more. Well, as Senator Daniel Patrick Moynihan was reputed to have said, everybody is entitled to his own opinion, but not to his own facts. So how do we actually get the facts about the effects of regulation, both the benefit side and the cost side? How do we get a better grip on what regulation produces that we like and also the things we have to give up in order to get that?

Well, the Federal Government already has a longstanding method for doing this; it is laid out in President Executive orders. President Obama's recent Executive order reiterated and reaffirmed these standards for assessing the effects of regulations. It is also laid out in guidance from the Office of Management and Budget in a document called Circular A–4. Presidents of both parties have issued these executive orders, laid out procedures for agencies to analyze regulations, laid out processes for regulatory review. And this has been going on for decades, so this is not new.

A good regulatory impact analysis, which is what these documents are about, a good regulatory impact analysis gives us answers to questions like what outcomes of direct value to the public does the regulation produce. Not just compliance, not just enforcement, but what actual results that the public benefits from are produced. What failure of the private market or failure of previous policy or other systemic problem is the regulation likely to solve? Systemic problems, not just are there a few anecdotes or are there a few bad actors that could be dealt with on a case-by-case basis. What are the alternative solutions? Because regulation is rarely a yes/no, on/off switch; there are alternative ways to do things that we should be looking at. And, finally, what are the pros and cons of the alternatives or, in economic jargon, costs and benefits?

These are the kinds of things that people are arguing about in front of this hearing and this creates kind of a puzzle because if

Federal regulatory agencies are already supposed to be assessing the effects of regulation, why do businesses, why do advocacy organizations, why do other kinds of interested parties feel like they have to come to Congress for redress? Why didn't the agency sort this all out when they issued the regulations? Part of the answer, I think, is that agencies often don't do the kind of comprehensive, high-quality analysis that fully identifies all of a regulation's effects. Experience shows that it takes more than words and an executive order to get good analysis done or for good analysis to get used when agencies issue regulations.

Since 2008, some of my colleagues and I at the Mercatus Center have had a project that we call the Regulatory Report Card, where we assess the quality of analysis that Federal agencies do when they issue regulations and the extent to which the agencies claim to use that when they make their decisions. This is a project on assessing the quality and completeness of the analysis, not a project on evaluating whether we like or don't like the regulations. Our criteria are drawn from Executive Order 12866, OMB Circulate A–4. Essentially the question we are trying to answer is how well are agencies doing the things that presidents have been telling them to do for more than 30 years. Those are our criteria.

We found some reasonably good analyses. We found a lot more that are seriously incomplete. If these analyses were student papers, the best grade would be a B-, the average would be an F. I don't think that is good enough to guide decisions that affect our health, that affect our safety, and affect our economy.

Here are some of the common problems we find. A lot of times, believe it or not, regulations don't do a good job of explaining what outcomes the regulation is supposed to produce. A lot of times we find that there is rarely an explanation or evidence of the existence of market failure or a systemic problem; the agency just says, well, Congress passed this law and told us to issue this regulation, so this is what we are going to do. In about half of the cases, the agencies don't identify alternative regulatory options or they don't give them anything more than cursory analysis. And only a minority of these analyses offer a really comprehensive look at costs and benefits or explain how the regulation actually affected a decision the agency made.

Now, we also find a lot of best practices that could substantially improve regulatory analysis if they were more widely shared. Clearly, the knowledge of how to do good regulatory analysis exists and is spread throughout the Federal Government. The problem is the incentives. There are institutional incentives that reduce agencies' incentive to produce good analysis and also reduce agency incentive to use the analysis when they do it.

I have a lot of ideas in my written testimony for reforms that could help solve this problem. A few possible ideas: require the agencies to actually explain how they use their analysis in the Federal Register notice when they propose regulations; require agencies to publish the analysis before they write the regulation and make decisions, instead of writing the analysis after they wrote the regulation; requiring them to publish the data and the models so that independent scholars or other outside folks who are interested

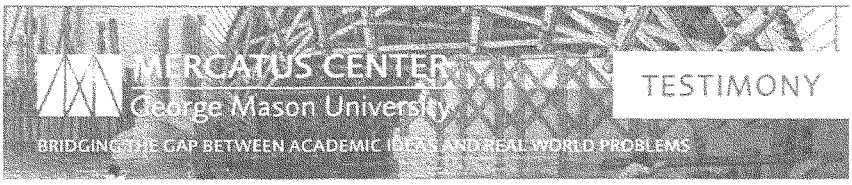
could do their own analysis as a quality check on what the agency did.

Now, I have a lot of other ideas in my written testimony. The common——

Chairman ISSA. In the Q&A we will give you plenty of opportunity to talk about them.

Mr. ELLIG. Oh, OK. No, don't worry, I wasn't going to give you another list. The bottom line is this, that in order to get good regulatory analysis and get it used, we need institutional reforms that will put teeth in the executive order.

[The prepared statement of Mr. Ellig follows:]



REGULATORY ANALYSIS: UNDERSTANDING REGULATION'S EFFECTS

FEBRUARY 10, 2011

Jerry Ellig, PhD
Senior Research Fellow

Submitted to the
Committee on Oversight and Government Reform
United States House of Representatives
Hearing on "Regulatory Impediments to Job Creation"

Chairman Issa, Ranking Member Cummings, and Members of the Committee:

Thank you for the opportunity to present this testimony. I am an economist and research fellow at the Mercatus Center, a 501(c)(3) research, educational, and outreach organization affiliated with George Mason University in Arlington, Virginia.[1] My principal research for the last 25 years has focused on the regulatory process and the effects of government regulation. For this reason, I'm delighted to testify on today's topic.

Federal regulation affects our quality of life and cost of living during every waking moment. When my clock radio went off this morning, the music traveled through a portion of the airwaves reserved by the Federal Communications Commission for FM radio broadcasts. The natural gas that heats our home traveled through interstate pipelines subject both to the Federal Energy Regulatory Commission's economic regulation and the Department of Transportation's safety regulation. The county treatment plant that supplies my faucet with water must meet standards set by the Environmental Protection Agency. I use a disposable razor to shave because my good one got confiscated when I tried to take it on an airplane. The canned pear halves my family ate for breakfast each weighed at least 17 grams, and the largest one in the can was no more than twice the size of the smallest one, thanks to Food and Drug Administration food standards.[2] On my way to work, I drop off my car at my mechanic's shop to get its emissions checked. And that's all just in the first hour of the day.

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[1] This testimony reflects only the views of its author and does not represent an official position of George Mason University.

[2] 21 CFR 145.175 (b)(1), available at http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?fr=145.175.

Yet that's enough time to illustrate the complex blend of federal regulations and their effects. Regulation runs the gamut from important things like air quality, water quality, and pipeline safety to seemingly trivial things like fruit size.

Overall, the effects of federal regulation are big. The Office of Management and Budget (OMB), relying on regulatory agency estimates, reports that major regulations it reviewed during the past ten years produced annual benefits worth between $128 billion and $616 billion, at a cost of between $43 billion and $55 billion. OMB readily admits that these figures are incomplete, because for some rules agencies do not calculate costs, or benefits, or both.[3] A report by Nicole V. Crain and W. Mark Crain for the Small Business Administration's Office of Advocacy pegs the total annual cost of regulation much higher, at $1.75 trillion.[4] Appropriations for regulatory agencies provide another measure of the importance of federal regulation; Congress appropriated $56.3 billion for regulatory agencies in fiscal 2010.[5]

We count on regulation to accomplish some important goals that private markets don't achieve. We also sacrifice a lot of other things to obtain the benefits regulation provides. Fundamentally, this is what much regulation does: it changes the mix of goods and services society produces and consumes.

The subject of today's hearing is regulation's effect on jobs. The Mercatus Center's director of policy research, Dr. Richard Williams, supplied a summary of academic research on this topic in response to a request from Chairman Issa.[6] Regulation can affect employment in two major ways. First, uncertainty about future regulation can prompt firms to delay investments until they have a better idea about what the "rules of the game" will be. This delayed investment delays job creation. Where there is either extended uncertainty or regulation that goes well beyond what other countries are doing, investment capital will find more stable or less onerous places to go, and the resulting jobs will be created overseas. Second, regulation can alter employment in particular industries by changing the mix of goods and services our economy produces. While the aggregate effect of particular regulations on overall employment is minimal, the effects on particular industries can be large.

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[3] Office of Management and Budget, *2010 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, http://www.whitehouse.gov/sites/default/files/omb/legislative/reports/2010_Benefit_Cost_Report.pdf.

[4] Nicole V. Crain and W. Mark Crain, "The Impact of Regulatory Costs on Small Firms," Report produced for the SBA Office of Advocacy under Contract No. SBA-HQ-08-M-0466, http://www.sba.gov/sites/default/files/rs371tot.pdf.

[5] Susan Dudley and Melinda Warren, *A Decade of Growth in the Regulators' Budget: An Analysis of the US Budget for Fiscal Years 2010 and 2011*. Washington, DC and St. Louis, MO: Regulatory Studies Center, The George Washington University, and Weidenbaum Center, Washington University in St. Louis, http://www.regulatorystudies.gwu.edu/images/pdf/regbudget20100518.pdf.

[6] Richard Williams, "The Impact of Regulation on Investment and the U.S. Economy," http://mercatus.org/sites/default/files/publication/House%20Oversight%20Response%20on%20Regulations%20and%20Economy[2].pdf, posted January 11, 2011.

In economic jargon, regulation "reallocates resources." In plain English, regulation destroys some jobs and creates others. Whether that's a good thing or a bad thing depends on whether the particular regulation increases or decreases the total value to consumers of the goods and services we produce, including non-market "goods" like clean air or safety from terrorism.

For this reason, the first step in understanding how regulation affects those jobs is understanding how regulation affects the allocation of resources in the economy. That's why sound regulatory analysis is a fundamental precondition for understanding how regulation affects jobs or anything else we care about.

Executive orders on regulatory review affect the ways executive branch agencies conduct regulatory analysis and the ways they use regulatory analysis to make decisions. On January 18, President Obama issued Executive Order 13563, "Improving Regulation and Regulatory Review."[7] I would like to address three principal aspects of Executive Order 13563 that may affect the quality and use of regulatory analysis by federal agencies:

1. The executive order reaffirms longstanding standards and regulatory review processes that have been in force since 1993.

2. It requires agencies to develop plans for retrospective analysis of existing rules.

3. It adds "human dignity" to the list of qualitative values agencies should consider and directs agencies to consider regulatory approaches that "maintain flexibility and freedom of choice for the public."

All of these are positive developments. But scholarly research on regulatory analysis, including the Mercatus Center's own Regulatory Report Card, suggests that agency regulatory analysis needs substantial improvement. The executive branch and Congress could do much more to ensure that regulatory agencies conduct high-quality analysis and use it to inform their decisions.

The body of my testimony contains detailed recommendations to accomplish these goals. Let me briefly summarize:

Regulatory review. Regulatory analysis needs to be encouraged, enforced, and required for all federal agencies. Agency economists should have the independence to conduct objective analysis. Agencies should publish regulatory analysis before writing proposed regulations and explain transparently how the analysis affected their decisions when they issue regulations.

Retrospective analysis. OMB and congressional oversight committees should enforce the provisions of the GPRA Modernization Act of 2010 that require agencies to identify regulations

[7] Executive Order 13563, "Improving Regulation and Regulatory Review," *Federal Register* 76:14 (Jan. 21, 2011), 3821-23, http://www.whitehouse.gov/sites/default/files/omb/inforeg/eo12866/eo13563_01182011.pdf.

that contribute toward their high-priority goals and periodically review their performance. Congress can encourage this by attaching real budget consequences to agencies' failure to meet their goals over a sustained period of time. To ensure that regulations receive objective, fundamental review, Congress should establish an independent body, perhaps modeled after the Base Realignment and Closure Commission, to evaluate existing regulations and recommend ineffective ones for elimination.

Human dignity and freedom of choice. This language in the executive order suggests a new, welcome emphasis on assessing regulation's effects on personal liberty. The benefits or costs uniquely attributable to regulation's effects on personal liberty have not been incorporated very well into agency regulatory analysis or OMB guidance, and further research may be required to figure out how. In the meantime, the administration (or Congress) can create a presumption in favor of personal liberty by requiring agencies to first analyze and consider the regulatory options that impose the least restrictions on personal liberty.

1. Review of New Regulations

Executive Order 13563 "reaffirms the principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866." In fact, Executive Order 12866 reaffirmed the principles originally established 30 years ago with Executive Order 12991. This reaffirmation is welcome. The analytical principles in Executive Order 12866 and OMB's accompanying guidance in Circular A-4[8] are sound. The administration's reaffirmation of those principles may help quell some uncertainty about future standards for regulatory review that has existed since the administration announced in January 2009 that it planned to revise the executive order.[9]

Unfortunately, presidential executive orders on regulatory review have had a limited effect on the quality and use of regulatory analysis. Case studies have revealed instances in which regulatory analysis helped improve regulatory decisions by providing additional options regulators could consider or unearthing new information about benefits or costs of particular modifications to the regulation.[10] But all too often, agency economists have to conduct regulatory analysis after most major decisions about regulations have already been made. The

[8] Office of Management and Budget, Circular A-4, "Regulatory Analysis" (Sept. 17, 2003), http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf.

[9] Office of Management and Budget, "Federal Regulatory Review: Request for Comments," *Federal Register* 74:37 (Feb. 26, 2009), 8819, http://www.reginfo.gov/public/jsp/EO/fedRegReview/OMB_FR_Notice_on_Regulatory_Review.pdf.

[10] Winston Harrington, Lisa Heinzerling, and Richard D. Morgenstern (eds.), *Reforming Regulatory Impact Analysis* (Washington, DC: Resources for the Future, 2009); Richard D. Morgenstern, *Economic Analyses at EPA: Assessing Regulatory Impact* (Washington, DC: Resources for the Future, 1997); Thomas O. McGarity, *Reinventing Rationality: The Role of Regulatory Analysis in the Federal Bureaucracy* (New York: Cambridge University Press, 1991).

analysis then becomes an advocacy document written to justify the agency's decisions, or a mere paperwork exercise to fulfill requirements imposed by the OMB. Surveying the scholarly evidence on regulatory analysis, Robert Hahn and Paul Tetlock conclude that economic analysis has not had much impact, and the general quality of regulatory analysis is low. "Nonetheless," they note, "in a world where regulatory impacts are frequently measured in the billions of dollars, margins matter. Thus, economists should pay more attention to how economic analysis can contribute to improving benefits and costs on the margin."[11]

In many cases, regulatory impact analyses are not sufficiently complete to serve as a guide to agency decisions. Since 2008, the Mercatus Center Regulatory Report Card has assessed the quality and use of regulatory analysis for proposed, economically significant regulations issued by executive branch agencies.[12] We assess how well the agency defines and measures the outcome the regulation is supposed to produce, identifies and provides evidence of a market failure or other systemic problem the regulation seeks to solve, assesses alternative approaches, and identifies the costs and benefits of the regulation. We evaluate the transparency, clarity, and documentation of models and data in the analysis. Finally, we assess the extent to which the agency used the analysis to make decisions and made provisions for retrospective analysis of the regulation. In short, we examine how well the agency complies with the major provisions of Executive Order 12866.

The attached paper I coauthored with John Morrall, a 29-year veteran of the Office of Information and Regulatory Affairs who joined Mercatus as an affiliated senior scholar in 2010, summarizes the Regulatory Report Card results for 2008 and 2009. We assign a score to economically significant rules ranging from 0 to 5 points on 12 different criteria, for a total possible score of 60 points. In both 2008 and 2009, agency regulatory analyses earned an average of about 27 out of a possible 60 points, or 45 percent. If these were student papers, the average would be an "F." The highest score in 2008 was 43 points (72 percent). The highest score in 2009 was 48 points (80 percent).[13] These findings are consistent with previous studies by academics and the Government Accountability Office that assess how well regulatory agencies comply with the executive orders governing regulatory analysis.[14]

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[11] Robert W. Hahn and Paul C. Tetlock, "Has Economic Analysis Improved Regulatory Decisions?," *Journal of Economic Perspectives* 22:1 (Winter 2008), 67-84.

[12] www.mercatus.org/reportcard.

[13] Jerry Ellig and John Morrall, "Assessing the Quality of Regulatory Analysis: A New Evaluation and Data Set for Policy Research," Working Paper, Mercatus Center at George Mason University (Dec. 2010), http://mercatus.org/publication/assessing-quality-regulatory-analysis.

[14] See Art Fraas and Randall Lutter, "The Challenge of Improving the Economic Analysis of Pending Regulations: The Experience of OMB Circular A-4," Resources for the Future Discussion Paper 10-54 (December 2010); Jamie Belcore and Jerry Ellig, "Homeland Security and Regulatory Analysis: Are We Safe Yet?," *Rutgers Law Journal* (Fall 2009), 1-96; Robert W. Hahn, Jason Burnett, Yee-Ho I. Chan, Elizabeth Mader, and Petrea Moyle, "Assessing Regulatory Impact Analyses: The Failure of Agencies to Comply with Executive Order 12,866." *Harvard Journal of Law and Public Policy* 23:3 (2001), 859–71; Robert W. Hahn, and Patrick Dudley, "How Well Does the Government Do Cost-Benefit Analysis?" *Review of Environmental Economics and Policy* 1:2 (2007), 192–211; Robert W. Hahn, and Robert Litan, "Counting Regulatory Benefits and Costs: Lessons for the U.S. and Europe,"

Table 1 shows average scores on each of our 12 criteria in 2008 and 2009. In general, the analyses score the best on the criteria that are easiest to satisfy, such as accessibility via the Internet, documentation of data and models, and clarity (Criteria 1–4).

One of the major areas where regulatory analysis is weakest is identification of the systemic problem the regulation is supposed to solve (Criterion 6). This is a key weakness. A systemic problem is a widespread problem that can be traced to a defect in the "rules of the game" that govern behavior—as opposed to the faults of a few "bad actors" that can be dealt with on a case-by-case basis. If the agency cannot identify and demonstrate the existence of a systemic problem that a regulation might solve, how can it assess whether the regulation is likely to solve the problem, or identify alternative solutions that might be more effective? Given the low score on this criterion, it is perhaps not surprising that average scores are also relatively low on other criteria that assess the "meat and potatoes" of the analysis—definition of the outcome the regulation is supposed to accomplish (Criterion 5), identification and assessment of alternatives (Criterion 7), and assessment of costs and comparison of costs with benefits (Criterion 8).

Table 1: Average Quality of Regulatory Analysis is Low

Criterion	2008 Average Score	2009 Average Score
Openness		
1. Accessibility	3.53	4.06
2. Data documentation	2.24	2.50
3. Model documentation	2.33	2.62
4. Clarity	2.93	2.83
Analysis		
5. Outcome definition	**2.36**	**2.38**
6. Systemic problem	**1.80**	**1.60**
7. Alternatives	**2.29**	**2.21**
8. Benefit-cost analysis	**2.09**	**2.19**
Use		
9. Some use of analysis	2.44	2.24
10. Considered net benefits	2.20	1.62
11. Measures and goals	1.36	1.29
12. Retrospective data	1.73	1.50
Total	27.31	27.02

Maximum possible score on each criterion is 5 points.
Maximum possible total score is 60 points.

Journal of International Economic Law 8:2 (2005), 473-508; Robert W. Hahn, Randall W. Lutter, and W. Kip Viscusi, *Do Federal Regulations Reduce Mortality?* Washington, DC: AEI-Brookings Joint Center for Regulatory Studies (2000); Government Accountability Office, *Regulatory Reform: Agencies Could Improve Development, Documentation, and Clarity of Regulatory Economic Analyses*, Report GAO/RCED-98-142 (May 1998); Government Accountability Office, *Air Pollution: Information Contained in EPA's Regulatory Impact Analyses Can Be Made Clearer*, Report GAO/RCED 97-38 (April 1997).

Few of the scores on individual criteria changed much between 2008 and 2009. We find some evidence that scores improved on some of the openness criteria, such as accessibility and documentation, consistent with the Obama administration's focus on transparency in the regulatory process. On average, explanations of how regulatory costs affect prices of goods and services also improved. Very modest improvements occurred in evidence of regulatory benefits and analysis of the distribution of benefits. In general, these changes involved improvements from poor scores to middling scores. This is why the score on Criterion 8, Benefit-cost analysis, increased slightly.

The Regulatory Report Card research team also searches the *Federal Register* notice for the proposed regulation to see if there is any evidence that the agency used information about the systemic problem, projected regulatory outcomes, alternatives, benefits, or costs to make decisions. We do not expect the analysis to dictate the decision via a rigid rule, such as "regulate only when monetized benefits exceed monetized costs." Section 1 of Executive Order 12866 explicitly instructs agencies to regulate only when the benefits "justify" the costs, unless the law requires another approach. Thus, the results of the regulatory analysis are supposed to inform the decision, not determine the decision. Indeed, information about projected benefits or regulatory alternatives could affect the agency's decision even if the agency is prohibited from considering costs (as with rules implementing the Clean Air Act). In these kinds of situations, we give agencies credit for using parts of the analysis, even if the agency did not use, or was prohibited from using, information about costs.

We look to see whether any of the information prepared for the regulatory analysis appears to have had any effect on the agency's decisions. We have found examples where agencies explicitly credit the regulatory analysis for affecting some significant decisions. This approach might generate some "false positives" by giving agencies credit for using the analysis even when decisions were made for other reasons. Nevertheless, the average scores on our Use criteria are relatively low—less than 2.5 out of a possible 5 points on each of these criteria. Even under our relatively liberal definition of "use," agencies claim to use the regulatory impact analysis for significant decisions only about 20 percent of the time at best:

- In 2008, agencies claimed the analysis affected a major decision for only 10 out of 45 proposed regulations.
- In 2009, analysis affected a major decision for only 9 out of 42 proposed regulations.
- In 2008, agencies chose the alternative that maximized net benefits or explicitly explained why they chose another option for 11 regulations.
- In 2009, they did so for 6 regulations.

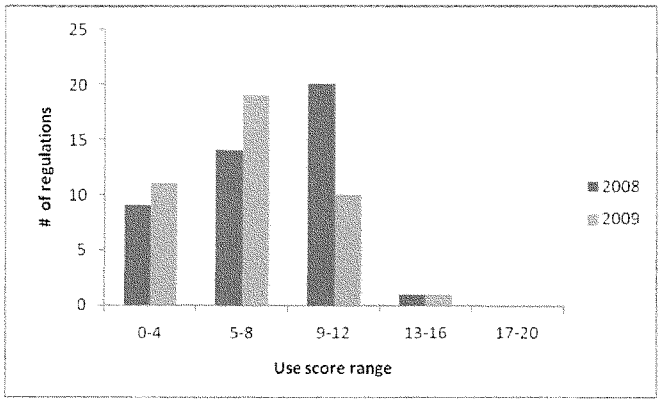
Scores are even lower on Criteria 11 and 12, which indicate whether the agency commits to using the results of regulatory analysis in the future by establishing goals and measures for the regulation's outcomes and tracking data to measure the regulation's performance. In a few cases, agencies do articulate goals for regulations, explain how regulations are linked to agency

strategic goals under the Government Performance and Results Act, commit to gathering data for retrospective evaluation, or commit to some form of retrospective review in the future. Usually, however, they say little about this.

The use of analysis in regulatory decisions decreased in 2009. This result is apparent from the average scores on Criteria 9–12 for 2008 and 2009. It becomes even stronger when we perform econometric analysis that controls for the quality of regulatory analysis and the shift in the mix of regulations proposed in the two years.

However, it would be a mistake to portray the first year of the Obama administration as a retreat from stellar use of analysis in the Bush administration. Figure 1 shows the distribution of Use scores in 2008 and 2009. Neither year shows more than middling use of analysis. The principal difference is that the middle class shrinks in 2009, with more proposed regulations that either fail to use the analysis or make only a passing reference to it. If agencies do not specifically let the public know how or whether they have used these analyses, the public is left largely in the dark about how their decisions were made.

Figure 1: Distribution of Scores for Use of Regulatory Analysis, 2008 and 2009



The good news is that for every criterion, a few regulatory analyses received a score of "5" for employing potential best practices, as table 2 shows. The line of table 2 labeled "Theoretical Highest Score" shows the score that could have been achieved in each year if one analysis had incorporated all of the best practices. Clearly, there is potential for tremendous improvement in the quality of regulatory analysis simply through better dissemination of best practices across agencies.

The *knowledge* required to produce better regulatory analysis exists, dispersed throughout agencies in the federal government. OMB Circular A-4 also summarizes a great deal of this knowledge. What's lacking are institutional *incentives* to produce good analysis.

Table 2: Diffusion of Best Practices Could Greatly Improve Average Quality

Criterion	2008 Average Score	2008 Highest Score	2008 # Earning Highest Score	2009 Average Score	2009 Highest Score	2009 # Earning Highest Score
Openness						
1. Accessibility	3.53	5	12	4.06	5	14
2. Data documentation	2.24	5	1	2.50	5	5
3. Model documentation	2.33	5	3	2.62	5	1
4. Clarity	2.93	5	3	2.83	4	10
Analysis						
5. Outcome definition	**2.36**	**5**	**2**	**2.38**	**5**	**1**
6. Systemic problem	**1.80**	**5**	**1**	**1.60**	**4**	**4**
7. Alternatives	**2.29**	**5**	**1**	**2.21**	**5**	**1**
8. Benefit-cost analysis	**2.09**	**4**	**3**	**2.19**	**5**	**1**
Use						
9. Some use of analysis	2.44	5	2	2.24	5	1
10. Considered net benefits	2.20	5	2	1.62	5	4
11. Measures and goals	1.36	5	1	1.29	4	1
12. Retrospective data	1.73	5	1	1.50	4	2
Total	27.31	43		27.02	48	
Theoretical Highest Score*		59			56	

Maximum possible score: 60 points.

For this reason, it is not enough for the administration to reaffirm the analytical methods and approach to regulatory review embodied in Executive Order 12866. The administration and Congress can both take further steps to ensure that all federal agencies conduct high-quality analysis of major proposed regulations and seriously consider the results of that analysis when they make regulatory decisions:

OIRA needs to enforce analytical standards by returning regulations with inadequate analysis. Within the administration, OIRA is supposed to serve as a regulatory gatekeeper, ensuring that agencies conduct high-quality regulatory analysis and consider it seriously. OIRA can enforce Executive Order 12866 by returning regulations to agencies for further analysis. Yet OIRA has not returned a regulation to an agency since January 6, 2009, during the final days of the Bush

administration.[15] The Mercatus Regulatory Report Card finds that many regulatory analyses have significant flaws and the quality of regulatory analysis appears to be unchanged since the Bush administration. Given those findings, it's curious that not a single regulation has been returned in two years. This signals that agencies can expect OIRA to rubber-stamp proposed regulations.

Agencies should be required to explain in the preambles to proposed and final rules whether or how they made use of the regulatory analysis. For 2008 and 2009, the agency regulatory analysis appears to have affected some regulatory decision for only about one-fifth of the proposed regulations. Either agencies ignore the regulatory analysis in the vast majority of cases, or they do not explain publicly how they have used it. At worst, the analysis often has little effect. At best, there is a significant transparency problem: agencies may be using the analysis without disclosing how. Either problem could be mitigated if OIRA refused to approve regulations that failed to explain how the analysis did or did not affect the decisions, or if Congress directed agencies to supply such explanations. Alternatively, Congress could amend the Administrative Procedures Act so that regulations issued without an explanation of the role of the regulatory analysis would be considered "arbitrary and capricious."

Agencies should be permitted to consider all aspects of the regulatory analysis when making decisions, but not required to follow a rigid decision rule. Executive Order 12866 directs agencies to consider, when making regulatory decisions, "incentives for innovation, consistency, predictability, the costs of enforcement and compliance (to the government, regulated entities, and the public), flexibility, distributive impacts, and equity." Agencies are to "propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs."[16] As the executive order recognizes, there are some very good reasons that agencies should not always be required to pick the regulatory option that maximizes the difference between monetized benefits and monetized costs. Unquantified values or other important public purposes may in some cases trump benefit-cost calculations.

In some cases, however, legislation prohibits agencies from considering certain effects of regulation, such as costs. There is much less justification for forcing some agencies to "fly blind" by prohibiting them from even considering some types of information from the regulatory impact analysis when making important decisions. Such prohibitions mandate ignorance.

Agency economists should have the independence to conduct objective analysis. Reality isn't optional. The goal of regulatory analysis is to produce knowledge about reality that can inform decisions. Interviews with agency economists reveal that they often face pressure to modify their analysis to support decisions that others in the agency have already made.[17] One way to promote

[15] http://www.reginfo.gov/public/do/eoReturnLetters.

[16] Executive Order 12866, Secs. 1(5) and 1(6).

[17] Richard Williams, "The Influence of Regulatory Economists in Federal Health and Safety Agencies," Working Paper, Mercatus Center at George Mason University (July 2008), http://mercatus.org/sites/default/files/publication/WP0815_Regulatory%20Economists.pdf.

objective analysis is to separate economists from the program offices that propose regulations. Economists' work should be evaluated by other economists, with compensation and career advancement depending on the quality of their analysis—not on whether the analysis supports decisions the agency has already made for other reasons.

Agencies should produce and publicize regulatory impact analysis before writing the regulation. Executive Order 12866 requires agencies to consider a wide range of regulatory options. Regulatory impact analysis can reveal the consequences of different options decision makers face. Yet all too often, the regulatory impact analysis gets produced after key decisions have already been made. The timing also effectively gives the federal government a monopoly on producing regulatory impact analyses and inhibits the public's ability to affect the quality of the analysis when it might actually affect agency decisions. Both problems could be mitigated if agencies were required to conduct and publish regulatory impact analyses (along with all underlying studies and data) for public comment before the proposed regulation is actually written. Agencies would have analysis of regulatory alternatives before they chose which alternative to pursue. In addition, the public would have the opportunity to replicate, improve, and comment upon the agency's economic analysis before the agency uses the analysis to make decisions. (This could be considered part of the advance consultation with stakeholders encouraged by Section 2 President Obama's new executive order.)

Regulatory analysis requirements should apply to independent agencies. No administration has sought to apply the regulatory analysis requirements in executive orders to independent agencies, such as the Federal Communications Commission, the Commodity Futures Trading Commission, or the new Consumer Financial Protection Bureau. Yet these agencies issued 94 major regulations during the past 10 years.[18] In some cases, such as the Consumer Product Safety Commission and the Securities and Exchange Commission, Congress has seen fit to require some form of economic analysis when agencies issue significant regulations. Such requirements should be standardized and applied to all independent agencies. In addition, there should be an enforcement mechanism at least as strong as OIRA review before these agencies can issue regulations. If Congress does not want to vest this review function in the executive branch, it should create an independent regulatory review commission whose primary mission is to ensure the quality and integrity of agency economic analysis.

2. Retrospective Analysis

Section 6 of Executive Order 13563 requires agencies to develop preliminary plans for periodic retrospective review of existing significant regulations. A similar requirement appears in Section 5 of Executive Order 12866, as well as Section 610 of the Regulatory Flexibility Act of 1980; thus, agencies were already supposed to have these plans in place since at least 1993. In many cases, legislation also requires agencies to conduct period review of specific types of regulations or regulations issued under the authority of particular legislation.

[18] OMB, *supra* note 3, Appendix C.

Unfortunately, putting agencies in charge of retrospective review of their own regulations rarely produces the kind of zero-based, sweeping reassessment necessary to determine whether a regulation is still needed, effective, cost-effective, and efficient. Agencies face at least two obstacles to effective in-house retrospective review. First is the natural human tendency to resist admitting that our past decisions might have been wrong. Second is the set of incentives facing entrenched stakeholders who have already made the expenditures to comply with the regulation. I've personally spoken with federal officials who wanted to do retrospective regulatory review but were frustrated by the lack of public input. Business firms in particular may be reluctant to recommend or support changes in regulations that might make it easier for new competitors to enter their markets by reducing the up-front costs of regulatory compliance. They may also worry about what regulations will replace the ones taken away in the future. For this reason, agencies may receive little or no input from regulated entities when they publish *Federal Register* notices soliciting suggestions for regulations they should review.

Regulatory agencies conduct numerous retrospective reviews of regulations, but these reviews only occasionally provide ex post estimates of costs and benefits of either the regulation or of possible alternatives. A recent Government Accountability Office report found that nine federal agencies conducted more than 1,300 regulatory reviews between 2001 and 2006, of widely varying scope. The report notes, "Our limited review of agency summaries and reports on completed retrospective reviews revealed that agencies' reviews more often attempted to assess the effectiveness of their implementation of the regulation rather than the effectiveness of the regulation in achieving its goal."[19]

Congress annually requires the Office of Management and Budget to produce a report on the benefits and costs of major existing regulations.[20] So little actual retrospective analysis exists, however, that OMB's annual report has to rely on the benefit and cost figures agencies projected in their regulatory impact analyses when they issued the regulations. Rather than providing a genuinely retrospective review of the benefits and costs of regulation (which was presumably Congress's intent), the report summarizes the predictions agencies made for major regulations issued during the prior ten years.

International comparisons also suggest that retrospective analysis by U.S. regulatory agencies is weak. The Organization for Economic Cooperation and Development (OECD) periodically produces reports that compare regulatory management practices in member nations. The assessment includes a survey of member nations' ex post regulatory review procedures. Each country receives a score ranging from zero to eight based on its responses to a series of questions about retrospective regulatory review. The average score was 4.5; only one nation, Korea, received a perfect score of 8. Other leaders, with scores of 6 or above, were Canada, Spain,

[19] Government Accountability Office, "Re-Examining Regulations: Opportunities Exist to Improve Effectiveness and Transparency of Retrospective Reviews," Report No. GAO-07-791 (2007), 20.

[20] OMB, *supra* note 18.

Finland, the United Kingdom, Australia, France, and Japan. The United States received a score of 4, ranking 19th out of 31 governments.[21]

Finally, the Mercatus Regulatory Report Card reveals that although agencies sometimes commit to retrospective analysis, set goals, or make provisions for gathering data when they issue regulations, these are the exceptions rather than the rule. The average scores on our two retrospective analysis criteria (Criteria 11 and 12) are barely above 1. This indicates that, on average, agency regulatory analyses provide some semblance of a framework for evaluating the regulation's effects on the future, but agencies have made no commitment to do so.

In 2008, we found only four proposed economically significant regulations for which the agency established goals or measures for any major outcome the regulation was supposed to produce. In only two cases did the agency enumerate the data it would use to evaluate major outcomes the regulation was supposed to produce. For 16 out of 45 regulations, the agencies indicated that they might conduct some type of analysis in the future to assess some of the regulation's effects. Similarly, in 2009, we found four proposed regulations for which the agency established goals or measures for a major outcome and two regulations for which the agency indicated what data it would use to evaluate major outcomes of the regulation in the future. Agencies indicated they might conduct some kind of retrospective analysis for only 14 out of 42 proposed regulations. Effective retrospective analysis requires more than a directive in an executive order. Several changes would help foster retrospective analysis that could help guide decisions about continuing regulations in the future:

Evaluate existing regulations under the Government Performance and Results Act (GPRA). The GPRA Modernization Act of 2010 requires establishment of goals and measures for many major regulations. It requires OMB to establish performance goals for the federal government; identify the agencies, program activities, tax expenditures and *regulations* that contribute to each goal; and establish performance indicators with quarterly targets to assess "the individual contribution of each agency, organization, program, *regulation*, tax expenditure, policy, and other activity identified."[22] Individual agencies must also identify the regulations that contribute to their high-priority performance goals.[23] At least quarterly, they must "assess whether relevant organizations, program activities, *regulations*, policies, and other activities are contributing as planned to the agency priority goals."[24]

Many major regulations will no doubt contribute to government-wide goals in the federal government's performance plan or agencies' high-priority goals. The GPRA Modernization Act thus provides a firm legislative basis for requiring all agencies to conduct retrospective analysis

[21] OECD, *Indicators of Regulatory Management Systems* (2009), http://www.oecd.org/dataoecd/44/37/44294427.pdf.

[22] H.R. 2142, GPRA Modernization Act of 2010, Section 1115(a). Emphasis added.

[23] Id., Section 1115(b)(5). Emphasis added.

[24] Id., Section 1121(b)(3). Emphasis added.

of existing regulations. Whether these requirements will receive much emphasis as agencies comply with the GPRA Modernization Act is an open question. It is up to OMB and congressional oversight committees to ensure that agencies comply with this law.

Beyond the reporting requirement is the issue of what decision makers are to do if regulations fail to accomplish their intended outcomes, fail to accomplish the hoped-for amount of the outcome, or fail to do so cost-effectively, or generate significant costs that were unforeseen when the regulation was adopted. "Insufficient resources" is just one possible explanation a regulation (or program or policy) may fail to meet its goals at an acceptable cost. Policy makers should not assume that these failures can be solved with larger appropriations or more regulation. At a minimum, these problems indicate that a regulation deserves fundamental re-examination. At a maximum, they may indicate that the regulatory approach is unworkable and needs to be changed. OMB and/or Congress can encourage scrutiny of existing regulations by attaching real budget consequences to agencies' failure to meet their goals over a sustained period of time.

Require explicit links to GPRA for new regulations. When an agency proposes a new regulation, the preamble in the Federal Register notice should indicate which government-wide and agency strategic goals the regulation is supposed to advance. The agency should identify performance indicators and the data it will use to evaluate the regulation's performance in the future. By doing so, agencies will ensure that new regulations that must be evaluated under the GPRA Modernization Act are identified, and they will lay the groundwork for retrospective analysis to determine whether the regulations actually produce the intended outcomes at the expected cost.

Enterprising agency leaders could undertake this change on their own initiative. OMB could require it as part of its efforts to administer the new law. Or, Congress could insist that agencies supply this information when regulations are submitted to Congress under the Congressional Review Act.

Establish an independent body tasked with retrospective analysis of regulations. Even with the GPRA Modernization Act, the primary impetus for retrospective analysis may have to come from an entity outside of the regulatory agencies themselves. One option would be for Congress to reauthorize and fund a Congressional Office of Regulatory Analysis within the Government Accountability Office, and explicitly task this office with conducting rigorous, independent retrospective analyses of the benefits and costs of regulations. Another option would be establishment of an independent Regulatory Review Commission, composed of experts who know how to conduct regulatory analysis and a staff that would conduct periodic reassessments of the benefits and costs of significant regulations after they have been implemented.[25] At a minimum, such a commission could conduct impartial analyses to inform both Congress and the executive branch. Alternatively, the commission could act much like the Base Realignment and

[25] Pennsylvania's Independent Regulatory Review Commission is one example. See http://www.irrc.state.pa.us/.

Closure Commission.[26] The commission would have authority to recommend packages of regulations for repeal, with an up-or-down vote in Congress.

3. Human Dignity and Freedom of Choice

The new executive order hints at a cluster of related values that have heretofore received little consideration in regulatory analysis. Section 1c adds "human dignity" to the list of non-quantified values agencies may consider. Section 4 directs agencies, where permitted by law, to consider regulatory approaches that "maintain flexibility and freedom of choice for the public."

These additions suggest a welcome focus on the effects of regulation on the dignity and liberty of the individual. I do not know if these changes are a reaction to "Don't touch my junk," or a reflection of OIRA Administrator Cass Sunstein's scholarly writings on nudges and "libertarian paternalism," or some other factor. But they open the door to a topic that has not received much explicit attention in previous executive orders or in agency regulatory analyses: respect for the liberty of the individual human person.

When regulation affects personal liberty, it can create benefits or costs. These are not usually well-understood, measured, or incorporated into regulatory analysis, but they are no less real.

This may sound a little abstract; it's easier to show what I mean with an example.
Airline security has clearly grown more strict since 9/11. This imposes a number of well-documented economic costs on travelers, such as increased waiting times and new fees on airline tickets to pay for the Transportation Security Administration. Airport security also imposes some other, less easily measured costs on passengers, as last fall's uproar about full-body scans and enhanced pat-downs demonstrates. Economists have even measured the extent to which the post-9/11 airline security measures have reduced air travel by prompting some travelers to substitute driving for flying on shorter trips, and they have measured the associated safety impact of putting more people on the highways.[27] A government owned-corporation, Amtrak, has noticed the possibility of substitution, seeking a slice of airlines' business by advertising that their passengers only have to take their shoes off when they want to. In short, a large number of costs associated with enhanced airport security can be measured using well-known economic techniques.

But for those of us who continue to fly, the enhanced security measures are hardly costless. I'm sure many members of Congress will readily agree that flying is a big hassle—much more of a hassle than pre-9/11. It's an even bigger hardship for those who don't like to have their bodies scanned or their "junk" touched. In economic terms, we're bearing a cost, but it's not a type of

[26] Jerry Brito, "Running for Cover: The BRAC Commission as a Model for Federal Spending Reform," *Georgetown Journal of Law & Public Policy* 9:1 (Winter 2011), 131-56, http://mercatus.org/publication/running-cover-0.

[27] Garrick Blalock, Vrinda Kadiyali, and Daniel H. Simon, "The Impact of Post-9/11 Airport Security Measures on the Demand for Air Travel," *Journal of Law & Economics* 50:4 (Nov. 2007), 731-56.

cost normally reflected in agency regulatory analysis. Conventional methods do a pretty good job of measuring the economic effects on the people who choose not to fly because of increased security hassles. But they do not measure the loss of value experienced by most of the people in this room, who continue to travel by air even though it is a more personally intrusive and less pleasant experience. An accurate assessment of the net effect of incremental changes in airport security requires that we account for these costs and compare them with the reduction in risk that results from additional security measures.

I'm not trying to single out the Department of Homeland Security. After several years of reading regulatory analyses from a wide variety of federal agencies, I have yet to see an analysis from any agency that accounts for costs or benefits uniquely related to personal liberty. Executive Order 12866 and OMB Circular A-4 do not provide guidance for addressing these types of costs or benefits. Indeed, it is not even clear that scholarly research on regulatory analysis has identified good methods for measuring this. I hope the inclusion of values like human dignity and freedom of choice in Executive Order 13563 will encourage greater thought and further research on how to account for them in regulatory analysis and regulatory decision making.

In the meantime, OIRA could administer the current regulatory analysis framework in a way that creates a preferential option for regulatory alternatives that promote respect for personal liberty. The existing executive orders already list a wide variety of alternatives OIRA wants agencies to consider, including information provision, disclosure requirements, warnings, default rules, user fees, marketable permits, and performance objectives.[28] OIRA (or Congress) could create a presumption in favor of personal liberty by requiring agencies to analyze first the options that create the least restriction on personal liberty. This information could help nudge agencies toward selecting options that are most consistent with personal liberty. The information about alternatives could also be useful if Congress reexamines the regulation under the Congressional Review Act. One possible ordering would be as follows:

1. Guidance on how market participants could use agency research and expertise to address the problem without new regulation;

2. Additional agency investment in research and expertise if they do not currently exist;

3. Agency-facilitated negotiations among stakeholders to devise a voluntary solution;

4. Mandatory disclosures, warnings, or other information provision;

5. Default rules that individuals can opt out of;

6. Performance standards;

7. Economic incentives (taxes, fees, cap-and-trade); and

[28] The first four are listed in Section 4 of Executive Order 13563. The last three are listed in Sections 1(b)(3) and 1(b)(8) of Executive Order 12866.

8. Command-and-control regulation.[29]

Conclusion

We expect federal regulation to accomplish a lot. But regulation also requires sacrifices. Depending on the regulation, consumers may pay more, workers may receive less, our retirement savings may grow more slowly due to reduced corporate profits, and we may have less personal freedom. And yes, some workers may see their jobs migrate to other sectors of the economy or even overseas. Regulatory analysis is the key ingredient that makes these tradeoffs more transparent to decision makers. So, understanding the effects of regulation has to start with sound regulatory analysis.

President Obama's recent executive order on regulation contains several positive features. It reaffirms longstanding standards and regulatory review processes, requires agencies to develop plans for retrospective analysis of existing regulations, and points the way toward greater consideration of regulation's effects on personal liberty. Achieving these goals, however, will require much more than an executive order. In this testimony, I have outlined a number of further steps that the administration and Congress can take to improve the quality and effectiveness of regulatory analysis.

[29] Bruce Yandle, "Rethinking Protection of Competition and Competitors," in Richard Williams (ed.), *21st Century Regulation: Discovering Better Solutions to Enduring Problems* (Arlington, VA: Mercatus Center at George Mason University, 2009), 55-67, http://mercatus.org/sites/default/files/publication/21st_Century_Regulation.pdf.

No. 10-75
December 2010

WORKING PAPER

ASSESSING THE QUALITY OF REGULATORY ANALYSIS: A New Evaluation and Data Set for Policy Research

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December 15, 2010

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* In addition to the research team that helped us evaluate agency Regulatory Impact Analyses and *Federal Register* preambles, we gratefully acknowledge research assistance from Dan Claybaugh, Gwen D'Luzansky, and Krista Speicher. We thank Randy Lutter and participants at the Society for Government Economists and Society for Risk Analysis meetings in 2010 for helpful comments and discussions on earlier drafts of this paper.

Assessing the Quality of Regulatory Analysis: A New Evaluation and Data Set for Policy Research

Abstract

Congress and the executive branch have attempted to improve the quality of regulatory decisions by adopting laws and executive orders that require agencies to analyze benefits and costs of their decision options. This paper assesses the quality and use of regulatory analysis accompanying every economically significant regulation proposed by executive-branch regulatory agencies in 2008 and 2009. It considers all analysis relevant to the topics covered by Executive Order 12866 that appears in the Regulatory Impact Analysis document or elsewhere in the *Federal Register* notice that proposes the rule.

Our research team used a six-point qualitative scale to evaluate each regulation on 12 criteria grouped into three categories: (1) Openness: How easily can a reasonably intelligent, interested citizen find the analysis, understand it, and verify the underlying assumptions and data? (2) Analysis: How well does the analysis define and measure the outcomes the regulation seeks to accomplish, define the systemic problem the regulation seeks to solve, identify and assess alternatives, and evaluate costs and benefits?; and (3) Use: How much did the analysis affect decisions in the proposed rule, and what provisions did the agency make for tracking the rule's effectiveness in the future?

We find that the quality of regulatory analysis is generally low, varies widely, and did not change much with the change of administrations between 2008 and 2009. The principal improvements across all regulations occurred on the Openness criteria. Budget or "transfer" regulations, which define how the federal government will spend money or collect revenues, have much lower-quality analysis than other regulations. Use of analysis is correlated with its quality, and use of analysis fell in 2009 after controlling for the quality of the analysis. Regulations implementing Recovery Act spending programs have better provisions for retrospective analysis than other transfer regulations.

Keywords: regulatory impact analysis, benefit-cost analysis, regulatory review, regulation

JEL categories: D61, D73, D78, H11, H83, K23, L51, P16

Introduction

For nearly four decades, presidential administrations have required executive-branch agencies to conduct some type of economic impact analysis when they issue major regulations. Since 1993, President Clinton's Executive Order 12866 has laid out the fundamental analytical steps agencies must take. The very first section of the executive order states that agencies must identify the problem they are trying to address and assess its significance, examine a wide range of alternatives to solve the problem, assess the costs and benefits of the alternatives, and choose to regulate only when the benefits justify the costs. Analytical requirements are especially rigorous for "economically significant" regulations, defined as regulations that "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal government or communities" (EO 12866, Sec. 2(f)(1)). Office of Management and Budget (OMB) Circular A-4, issued in September 2003, offered more detailed guidance on "best practices" in regulatory analysis (OMB 2003).

Despite executive orders and detailed guidance, the quality of agencies' regulatory analysis has been inconsistent at best:

- Several studies compared agencies' ex-ante predictions of regulatory benefits and costs with ex-post estimate of actual benefits and costs (Harrington et. al. 2000, OMB 2005, Harrington 2006). These studies found that, in the past, ex-ante estimates tended to overestimate both benefits and costs.

- In a series of papers, Robert Hahn developed and applied a yes/no checklist to evaluate whether agencies' Regulatory Impact Analyses have included a series of major elements that OMB expects them to include. The evaluations focused on final regulations issued by health, safety, and environmental agencies (Hahn and Dudley 2007, Hahn et. al. 1990, Hahn and Litan 2005, Hahn, Lutter, and Viscusi 2000). Surveying the evidence, Hahn and Tetlock (2008, 82–83) conclude that economic analysis has not had much impact, and the general quality of regulatory analysis is low. "Nonetheless," they note, "in a world where regulatory impacts are frequently measured in the billions of dollars, margins matter. Thus, economists should pay more attention to how economic analysis can contribute to improving benefits and costs on the margin."

- Belcore and Ellig (2008) employed a qualitative scoring approach to assess the quality of regulatory analysis at the Department of Homeland Security during its first five years; they conclude these analyses have been seriously incomplete but improved over time.

Most recently, Ellig and McLaughlin (2010) developed a 12-point qualitative framework to assess both the quality and use of regulatory analysis in federal agencies. They evaluated the quality and use of regulatory analyses of "economically significant" rules that were reviewed by OMB's Office of Information and Regulatory Affairs (OIRA) in 2008 and proposed in the

Federal Register.[1] The evaluation criteria are drawn from Executive Order 12866, OMB Circular A-4, and pre-existing scholarship on regulatory scorecards.[2] Ellig and McLaughlin found that the average quality of the 2008 regulatory analyses is low, both the quality and use of regulatory analysis vary widely, and there are significant opportunities for improvement through the diffusion of best practices. They also found that better analyses are more likely to be used in agency decisions, but only one-fifth of the regulatory analyses in 2008 appeared to have any effect on regulatory decisions (based on information agencies supplied in the preamble).

This study utilizes the Ellig and McLaughlin method to evaluate the quality and use of regulatory analysis for economically significant regulations proposed by executive-branch agencies in 2009. This is of interest for several reasons. First, a comparison of 2008 and 2009 would help identify whether the change of presidential administrations had any effect on the quality or use of regulatory analysis. Second, the Obama administration proposed in February 2009 to revise Executive Order 12866 (OMB 2009a); evaluating the quality and use of regulatory analysis in the Obama administration prior to the revision establishes a baseline to gauge the effects of any changes. Third, extending the evaluation to 2009 and subsequent years builds a larger data set, which may allow us to draw more reliable general inferences about the relative quality of analysis at different agencies or for different types of regulations.

Our principal findings include:

Quality is mostly unchanged in 2009. The average score for regulations proposed in 2008 and 2009 was virtually the same—27 points out of a possible 60. The most significant improvements occurred on Openness criteria, such as online accessibility of regulatory analyses and clarity. On average, explanations of how regulatory costs affect prices of goods and services also improved. Very modest improvements occurred in evidence of regulatory benefits and analysis of the distribution of benefits.

Analysis is less-widely used in 2009. Higher-quality analysis is more likely to be used in regulatory decisions. But for any given level of quality, regulatory agencies were less likely to use the analysis in 2009 than in 2008. This change is disturbing, because one of the most important reasons for doing regulatory analysis is so that decision makers can somehow use it to make better decisions. Of course, good regulatory analysis is also important for reviewers (like OMB) and stakeholders.

Quality is generally low. In both years, the average score is less than half of the possible 60 points. The highest-scoring regulation in 2008 earned 43 out of 60 possible points, equivalent to a grade of C. The highest-scoring regulation in 2009 earned 48 out of 60 possible points, equivalent to a B–.

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[1] Economically significant regulations require an extensive Regulatory Impact Analysis (RIA) that assesses the need, effectiveness, benefits, costs, and alternatives for the proposed regulation. (EO 12866 Sec. 6(a)(3)(C))

[2] The qualitative evaluation method is based on the Mercatus Center's *Performance Report Scorecard*, a 10-year project that assessed the quality of federal agencies' annual performance reports required under the Government Performance and Results Act of 1996. For the most recent results, see McTigue et. al. (2009).

Diffusion of best practices could generate substantial improvement. In 2009, scores ranged from a high of 48 points to a low of just 3 points. In 2008, scores ranged from a high of 43 points to a low of 7 points. For each of our 12 criteria, at least one regulation earned the highest possible score of 5. But for 11 of our 12 criteria, less than a handful of regulations receive a 5. The fact that the highest-scoring regulation in 2009 resulted from collaboration between two agencies also suggests wider sharing of best practices can improve regulatory analysis.

Transfer regulations have worse analysis. Budget or "transfer" regulations, which determine how the federal government will spend or collect money, receive much lower scores. On average, transfer regulations received only 17 points in 2008 and 20 points in 2009, compared to an average of 32–34 points for non-transfer regulations.

Greatest strength: Accessibility on the Internet. Scores on this criterion averaged 4.06 out of 5 possible points in 2009 and 3.53 out of 5 possible points in 2008. These far exceeded average scores on any other evaluation criterion.

Greatest weaknesses: Retrospective analysis and identification of systemic problem. Few regulations or analyses set goals, establish measures, or provide for data gathering to assess the effects of the regulation after it is implemented. Few analyses provide a coherent theory and empirical evidence of a market failure, government failure, or other systemic problem the regulation is supposed to solve.

1. Evaluation Protocol

We evaluated the quality and use of regulatory analysis using 12 criteria grouped into three categories—Openness, Analysis, and Use:

1. Openness: How easily can a reasonably intelligent, interested citizen find the analysis, understand it, and verify the underlying assumptions and data?

2. Analysis: How well does the analysis define and measure the outcomes or benefits the regulation seeks to accomplish, define the systemic problem the regulation seeks to solve, identify and assess alternatives, and evaluate costs and benefits?

3. Use: How much did the analysis affect decisions in the proposed rule, and what provisions did the agency make for tracking the rule's effectiveness in the future?

Figure 1 lists the 12 criteria. Appendix 1 provides additional detail on the kinds of questions considered under each criterion. For a more extensive explanation and justification of this evaluation method, see Ellig and McLaughlin (2010). Individual "Report Cards" showing all scores and scoring notes for each regulation are available at www.mercatus.org/reportcard.

Ten of the 12 evaluation criteria closely parallel the Regulatory Impact Analysis checklist released by the Obama administration on November 3, 2010 (OMB 2010). This is not surprising, since both the administration's checklist and the Mercatus evaluation criteria are based on Executive Order 12866 and OMB Circular A-4. Appendix 2 presents a crosswalk chart comparing the OMB checklist with the 12 criteria used in this paper.

The principal Mercatus evaluation criteria not mentioned in the Obama administration's checklist are two criteria that assess whether the agency provided for retrospective analysis of the regulations' actual effects after it is adopted: criterion 11 (Measures and Goals) and criterion 12 (Retrospective Data). Although ex post, retrospective analysis has not received as much attention as ex ante analysis of proposed regulations; section 5 of Executive Order 12866 states that agencies should conduct retrospective analysis. OMB (2005) has recommended it repeatedly; most recently, OMB (2009b, 45) stated, "[W]e recommend that serious consideration be given to finding ways to employ retrospective analysis more regularly, in order to ensure that rules are appropriate, and to expand, reduce, or repeal them in accordance with what has been learned." The Government Performance and Results Act arguably requires retrospective analysis of regulations (Brito and Ellig 2009). It is a major area of regulatory analysis where the United States lags other industrialized nations (OECD 2009, 92).

Figure 1: Regulatory Analysis Assessment Criteria

Openness

1. **Accessibility:** How easily were the Regulatory Impact Analysis, the proposed rule, and any supplementary materials found online?
2. **Data Documentation:** How verifiable are the data used in the analysis?
3. **Model Documentation:** How verifiable are the models and assumptions used in the analysis?
4. **Clarity:** Was the analysis comprehensible to an informed layperson?

Analysis

5. **Outcomes:** How well does the analysis identify the desired benefits or other outcomes and demonstrate that the regulation will achieve them?
6. **Systemic Problem:** How well does the analysis identify and demonstrate the existence of a market failure or other systemic problem the regulation is supposed to solve?
7. **Alternatives:** How well does the analysis assess the effectiveness of alternative approaches?
8. **Benefit-Cost Analysis:** How well does the analysis assess costs and compare them with benefits?

Use

9. **Some Use of Analysis:** Does the preamble to the proposed rule or the Regulatory Impact Analysis present evidence that the agency used the analysis?
10. **Cognizance of Net Benefits:** Did the agency maximize net benefits or explain why it chose another option?
11. **Measures and Goals:** Does the proposed rule establish measures and goals that can be used to track the regulation's results in the future?
12. **Retrospective Data:** Did the agency indicate what data it will use to assess the regulation's performance in the future and establish provisions for doing so?

Scoring Standards

For each criterion, the evaluators assigned a score ranging from 0 (no useful content) to 5 (comprehensive analysis with potential best practices). Thus, each analysis has the opportunity to earn between 0 and 60 points. In general, the research team used the guidelines in table 1 for scoring. Because the Analysis criteria involve so many discrete aspects of regulatory analysis, we developed a series of sub-questions for each of the four Analysis criteria and awarded a 0–5 score for each sub-question. These scores were then averaged to calculate the score for the individual criterion.

Table 1: What Do the Scores Mean?

5	Complete analysis of all or almost all aspects, with one or more "best practices"
4	Reasonably thorough analysis of most aspects and/or shows at least one "best practice"
3	Reasonably thorough analysis of some aspects
2	Some relevant discussion with some documentation of analysis
1	Perfunctory statement with little explanation or documentation
0	Little or no relevant content

Caveats and Qualifications

At the outset of this project, we had to address a seemingly simple question: What counts as a "regulatory analysis"? Most previous research focuses on the document required by OMB that is explicitly named the "Regulatory Impact Analysis" (Hahn and Dudley 2007, Hahn et. al. 1990, Hahn and Litan 2005, Hahn, Lutter, and Viscusi 2000). We adopted a broader definition that includes the entire preamble to the proposed rule, the freestanding document or section of the preamble labeled Regulatory Impact Analysis, and additional "technical support documents" that sometimes accompany a Regulatory Impact Analysis. Since different agencies organize their material in different ways, this approach helped ensure that we were fair to all agencies and included all material relevant to the topics a good regulatory analysis is supposed to address. We also needed to read the entire preamble to assess whether the agency used the results of the regulatory analysis or made provisions to conduct retrospective analysis in the future.

Given resource constraints, any evaluation project like this faces a fundamental choice between breadth and depth of the assessment. We assess whether the Regulatory Impact Analysis and preamble to the proposed rule make a reasonable effort at covering the major elements of regulatory analysis. Commenters on earlier versions of this paper who have detailed knowledge of particular regulations have usually told us that our evaluations seem too lenient. Others with more specialized knowledge will likely have additional important critiques of individual regulations, especially related to the quality, completeness or use of the underlying science. We have opted for less depth in favor of greater breadth. To the best of our knowledge, this is the

most-detailed assessment of the quality of regulatory analysis for all economically significant regulations proposed in a two-year period.

Finally, we caution the reader about drawing direct policy conclusions about particular regulations based on our analysis. Criteria 1–8 only evaluate the quality of regulatory analysis. We do not evaluate whether the proposed rule is economically efficient, fair, or otherwise good public policy.

The same caveat applies to the Use criteria. Criteria 9 and 10 assess the extent to which analysis of the regulation's outcomes or benefits, the systemic problem, the alternatives, and costs informed the agency's decisions about the regulation. On these criteria, we took great pains to avoid imposing the value judgment economists often make: that the agency should choose the most economically efficient alternative, as determined by a comparison of quantified benefits and costs. If an agency used some analysis of a regulation's benefits to make decisions, even if it did not consider costs or efficiency, it could receive some points on criterion 9. Similarly, if an agency demonstrated that it was fully cognizant of the net benefits of alternatives, but explicitly rejected the alternative with the greatest net benefits in favor of some other alternative for clearly articulated reasons, it could receive points on criterion 10. As a result, an agency can earn points on these two criteria even in cases where it is prohibited by law from considering costs, such as the EPA's national ambient air quality standards. We believe this approach is consistent with the spirit of Executive Order 12866 (sec. 1), which identifies multiple factors in addition to efficiency that are supposed to guide agency decisions: "[I]n choosing among regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach."

Criteria 11 and 12 assess the extent to which the agency demonstrated its willingness to evaluate the regulation's actual effects in the future. Ideally, agencies would articulate goals, measures, and data that they could use to assess both realized benefits and costs, thus assessing the regulation's economic efficiency. In practice, so few regulations include any provisions for retrospective analysis that the handful of high scores occur in cases where agencies have at least identified goals, measures, and data that could be used to assess the regulation's effectiveness.

Improving the transparency of regulatory documents and the quality of regulatory analysis are necessary but not sufficient to improve public policy. Nevertheless, stakeholders or the agencies themselves may find these analyses useful as a starting point for identifying weaknesses in agency analyses. For example, if an agency has identified only one or two closely related regulatory alternatives, stakeholders may be able to identify additional alternatives that may accomplish the goal at a lower cost.

2. Results for 2009

2.1 Best and Worst Analyses

Table 2 lists all 42 economically significant proposed regulations for 2009. The best analysis was for the combined Environmental Protection Agency–Department of Transportation regulation on greenhouse gases from light-duty vehicles and Corporate Average Fuel Economy (CAFE) standards. This regulation received the highest total score (48 points) as well as the highest Analysis score (18 points). The two agencies collaborated on developing the regulation and the analysis. The regulatory analysis discusses the "conundrum" associated with the identified market failure. The agencies recognize that their estimates of the private benefits of increased fuel efficiency outweigh private costs, yet consumers do not voluntarily purchase as many fuel-efficient cars as economic rationality would suggest. This sort of disclosure should prove invaluable to stakeholders who wish to comment more extensively on the merits of the rule that requires increases in fuel efficiency. The result suggests that more extensive sharing of best practices could improve the quality of regulatory analysis. This regulation received a score six points higher than the next-best regulation in 2009 and five points higher than DOT's CAFE regulation in 2008.

Capturing second place in 2009 are three energy-efficiency regulations from the Department of Energy and the Department of Homeland Security's regulation limiting concentrations of live organisms permitted in discharged ballast water from ships.

The three worst analyses came from the Department of Education (General and Non-Loan Programmatic Issues, 14 points) and the Department of Energy (Weatherization Assistance, 10 points; Loan Guarantees for Projects that Employ Innovative Technologies, 5 points). Like most of the low-ranking regulations, all three of these are budget or "transfer" regulations. Transfer regulations, italicized in table 2, outline how the federal government will spend money, set fees, or administer spending programs. Most of these regulations score poorly, continuing a trend observed in 2008 (Ellig and McLaughlin 2010, 14–15).

The best analysis in 2009 received 48 points, or 80 percent of the maximum possible score. The worst received just five points (8 percent). The range of scores widened compared to 2008. In 2008, scores ranged from seven points to 43 points. If these were student papers, the best one in 2009 would have received a B-, and the best one in 2008 would have received a C.

2.2 Summary Statistics

Table 3 summarizes average total scores and scores on the three categories of criteria for 2008 and 2009. The average score in 2009 was 27.02 points out of a possible 60, or 45 percent. The average for 2008 was 27.31, virtually the same. The very low t-statistic indicates that the difference is not statistically significant; for all practical purposes, the averages are the same.[3]

[3] In plain English, that means the total scores for 2008 and 2009 are like two sets of ping pong balls pulled at random out of the same bucket; any difference in the averages is random chance. There is likely no difference at all between the total scores for the two years.

Table 2: Scores for 2009 Proposed Regulations

Proposed Rule	RIN	Department	Total	Openness	Analysis	Use
Greenhouse Gases from Light-Duty Vehicles	2060-AP58	DOT/EPA	48	15	18	15
Energy Conservation: Small Electric Motors	1904-AB70	DOE	42	16	14	12
Energy Efficiency Standards for Commercial Clothes Washers	1904-AB93	DOE	40	14	14	12
Energy Efficiency Standards for Pool Heaters etc.	1904-AA90	DOE	40	14	14	12
Living Organisms in Ships' Ballast Water Discharged in U.S. Waters	1625-AA32	DHS	40	15	15	10
Nutrition Labeling of Single-Ingredient Products	0583-AC60	USDA	38	14	16	8
Title V Greenhouse Gas Tailoring Rule	2060-AP86	EPA	38	15	11	12
Emissions From New Marine Compression-Ignition Engines	2060-AO38	EPA	37	15	16	6
Portland Cement NESHAP	2060-AO15	EPA	35	17	11	7
Greenhouse Gas Mandatory Reporting Rule	2060-AO79	EPA	34	12	10	12
Migratory Bird Hunting	1018-AW31	Interior	34	13	12	9
Emission Standards, Reciprocating Internal Combustion Engines	2060-AP36	EPA	33	14	11	8
End Stage Renal Disease Prospective Payment System	*0938-AP57*	*HHS*	*32*	*13*	*9*	*10*
Lead; Opt-out and Recordkeeping Provisions	2070-AJ55	EPA	32	16	13	3
Primary National Ambient Air Quality Standard for Nitrogen Dioxide	2060-AO19	EPA	32	11	14	7
Motor Vehicle Safety Standards, Ejection Mitigation	2127-AK23	DOT	31	12	11	8
School Improvement Grants	*1810-AB06*	*ED*	*31*	*11*	*7*	*13*
Primary National Ambient Air Quality Standard for Sulfur Dioxide	2060-AO48	EPA	30	12	12	6
Medical Examination of Aliens	0920-AA26	HHS	28	14	12	2
Positive Train Control	2130-AC03	DOT	26	10	7	9
Prospective Payment Skilled Nursing Facilities	*0938-AP46*	*HHS*	*26*	*11*	*8*	*7*
Electronic Health Record Incentive Program	*0938-AP78*	*HHS*	*25*	*13*	*7*	*5*
Home Health Prospective Payment System	*0938-AP55*	*HHS*	*25*	*11*	*8*	*6*
Prospective Payment System for Inpatient Rehabilitation Facilities	*0938-AP56*	*HHS*	*25*	*15*	*5*	*5*
Hospital Inpatient and Long-Term Care Prospective Payment System	*0938-AP39*	*HHS*	*24*	*14*	*5*	*5*
Hazard Communications Standard	1218-AC20	DOL	24	13	7	4
Outpatient Prospective Payment	*0938-AP41*	*HHS*	*24*	*13*	*6*	*5*
Race to the Top Fund	*1810-AB07*	*ED*	*23*	*9*	*5*	*9*
Revisions to Payment Policies Under the Physician Fee Schedule	*0938-AP40*	*HHS*	*23*	*11*	*6*	*6*
State Fiscal Stabilization Fund Program	*1810-AB04*	*ED*	*23*	*13*	*5*	*5*
Renewable Fuels Program	2060-AO81	EPA	21	11	6	4
Special Community Disaster Loans Program	*1660-AA44*	*DHS*	*20*	*11*	*6*	*3*
Investing in Innovation	*1855-AA06*	*ED*	*19*	*11*	*4*	*4*
Hospice Wage Index for FY 2010	*0938-AP45*	*HHS*	*18*	*9*	*4*	*5*
Housing Trust Fund Program	*2506-AC23*	*HUD*	*18*	*10*	*3*	*5*
Revisions to the Medicare Advantage Program	*0938-AP77*	*HHS*	*18*	*9*	*4*	*5*
Credit Assistance for Surface Transportation Projects	*2105-AD70*	*DOT*	*17*	*11*	*5*	*1*
Expansion of Enrollment in the VA Health Care System	*2900-AN23*	*VA*	*17*	*11*	*3*	*3*
Children's Health Insurance Program (CHIP)	*0938-AP53*	*HHS*	*15*	*8*	*1*	*6*
General and Non-Loan Programmatic Issues	*1840-AC99*	*ED*	*14*	*8*	*2*	*4*
Weatherization Assistance Program	*1904-AB97*	*DOE*	*10*	*6*	*3*	*1*
Loan Guarantees for Projects that Employ Innovative Technologies	*1901-AB27*	*DOE*	*5*	*3*	*2*	*0*
Averages			27.02	12.00	8.38	6.64

Note: Regulations in red italics are budget or "transfer" regulations.

Some slight shifts in scores may have occurred in two of the categories between 2008 and 2009. The average Analysis score was largely unchanged. The average Openness score increased by about one point–from 11.04 in 2008 to 12 in 2009. The average Use score fell by about a point, from 7.73 in 2008 to 6.64 in 2009. These differences are statistically significant at the 85 percent confidence level. This is suggestive, but not nearly as strong an indicator as the 95 percent confidence level economists normally use as the standard to infer a likely relationship. Based on this comparison of averages for all kinds of regulations, perhaps the transparency of regulatory analysis increased in 2009, and actual use to make decisions may have decreased, but the difference is not clear enough to tell for sure.

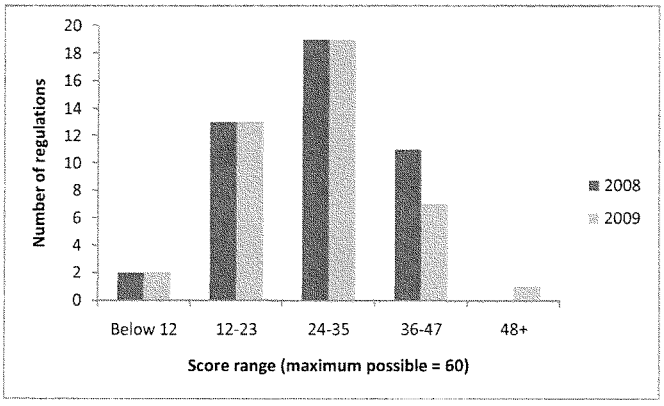
Figure 2 shows that the distribution of scores was roughly the same in both years. The only differences are that the joint DOT/EPA regulation received a score of 48 in 2009, and several more regulations in 2008 received scores in the 36–47 range.

Table 3: Average Scores, 2008 vs. 2009

	2008 (n=45)	2009 (n=42)	Change	T-stat.
Total Score	27.31	27.02	–0.29	0.14
Openness	11.04	12.00	0.96	1.46
Analysis	8.53	8.38	–0.15	0.16
Use	7.73	6.64	–1.09	1.48

Maximum possible total score = 60. Maximum possible score on each category = 20.

Figure 2: Distribution of Scores



2.3 Average Scores by Criterion

Table 4 shows the average score for each criterion in 2008 and 2009. For each criterion, at least one regulation earned the highest possible score of 5 in most cases. Best practices, however, are not widely shared. The "# Earning Highest Score" column demonstrates that, except for Availability, very few regulations earn a score of 5 on any individual criterion. The "Theoretical Highest Score" is the score a hypothetical regulation could have earned if it had incorporated all of the best practices identified that year. For 2009, the highest-scoring regulation is much closer to the theoretical highest score than in 2008.

Table 4: Scores by Criterion

Criterion	2008 Average Score	2008 Highest Score	2008 # Earning Highest Score	2009 Average Score	2009 Highest Score	2009 # Earning Highest Score
1. Accessibility	3.53	5	12	4.06	5	14
2. Data Documentation	2.24	5	1	2.50	5	5
3. Model Documentation	2.33	5	3	2.62	5	1
4. Clarity	2.93	5	3	2.83	4	10
5. Outcome Definition	2.36	5	2	2.38	5	1
6. Systemic Problem	1.80	5	1	1.60	4	4
7. Alternatives	2.29	5	1	2.21	5	1
8. Benefit-Cost Analysis	2.09	4	3	2.19	5	1
9. Some Use of Analysis	2.44	5	2	2.24	5	1
10. Considered Net Benefits	2.20	5	2	1.62	5	4
11. Measures and Goals	1.36	5	1	1.29	4	1
12. Retrospective Data	1.73	5	1	1.50	4	2
Total	27.31	43		27.02	48	
Theoretical Highest Score*		59			56	

Very few of the score changes between 2008 and 2009 are statistically significant.[4] Moreover, changes in averages for some criteria appear to be driven by the changing mix of regulations rather than an actual change in the quality of agencies' analysis. An accurate assessment of changes, therefore, requires separate consideration of transfer and non-transfer regulations.[5]

[4] Summary statistics for all criteria, and the sub-questions for criteria 5–8, are in appendix 3.
[5] Statistically significant changes in averages for the entire set of regulations, without distinguishing between transfer and non-transfer regulations, are in appendix 4.

2.4 Transfer vs. Non-Transfer Regulations

Several previous studies using 2008 data, as well as table 2, demonstrate that the quality and use of analysis for transfer regulations is well below the quality and use of analysis for non-transfer regulations (Ellig and McLaughlin 2010, McLaughlin and Ellig 2010). Indeed, OMB (2008, 12–17) observes that although transfer regulations generate social costs via mandates, prohibitions, and price distortions, agencies do not usually estimate the social benefits and costs of transfer regulations.

Table 5 confirms that the quality and use of analysis for transfer regulations is much lower in both 2008 and 2009. In 2008, for example, the average total score for transfer regulations (17 points) is 47 percent below the average score for non-transfer regulations (32 points). Similarly, in 2009 the average total score for transfer regulations (21 points) is 40 percent below the average total score for non-transfer regulations (34 points). These differences occur for Openness, Analysis, and Use. Openness has the smallest gap, but even there, transfer regulations score 20–30 percent below non-transfer regulations.

Table 5: Transfer vs. Non-Transfer Regulations, Average Scores

	Transfer 2008 (n=15)	**Non-Transfer 2008** (n=30)	**Difference**	**T-stat.**
Total Score	17.07	32.43	15.37	8.03
Openness	8.6	12.27	3.67	4.16
Analysis	3.53	11.03	8.53	8.71
Use	4.93	9.13	4.20	4.99
	Transfer 2009 (n=22)	**Non-Transfer 2009** (n=20)	**Difference**	**T-stat.**
Total Score	20.54	34.15	13.65	6.84
Openness	10.5	13.65	3.15	4.32
Analysis	4.91	12.20	7.29	8.9
Use	5.14	8.3	3.16	3.18

All differences are statistically significant at greater than the 99 percent level of confidence. Maximum possible total score = 60. Maximum possible score on each category = 20.

Because transfer regulations generally receive lower scores, a shift in the mix of transfer vs. non-transfer regulations could affect changes in average scores from one year to the next. In 2008, there were 15 proposed economically significant transfer regulations, accounting for 33 percent of proposed economically significant regulations. In 2009, there were 22 proposed economically significant transfer regulations, accounting for 52 percent of proposed economically significant regulations. The increase mostly reflects five regulations proposed in 2009 that implemented provisions of the American Recovery and Reinvestment Act. Thus, one might expect that the average quality and use of regulatory analysis would be lower in 2009 than in 2008 simply because more transfer regulations were proposed in 2009.

Table 6: Score Changes on Individual Criteria and Questions, Transfer vs. Non-Transfer Regulations

	2008 (n=30)	**2009** (n=20)	**Change**	**T-stat.**
Non-Transfer Regulations				
Total Score	32.43	34.15	1.72	0.94
Openness	12.27	13.65	1.38	1.91*
Criterion 1 – Availability	3.30	3.95	0.65	1.69*
Criterion 2 – Data Documentation	2.63	3.15	0.52	1.66*
Criterion 3 – Theory and Model Documentation	2.83	3.30	0.47	1.49
Analysis	11.03	12.20	1.17	0.20
Criterion 5 – Outcomes	3.10	3.55	0.45	1.63
Question 5D – Evidence Regulation Will Affect Outcome	2.40	3.15	0.75	1.88*
Criterion 8 – Cost-Benefit Analysis	2.60	3.10	0.5	2.15**
Question 8C – Effects on Prices of Goods and Services	1.70	3.30	1.60	3.91***
Question 8G – Calculates Cost-Effectiveness	1.43	2.35	0.92	2.35**
Question 8I – Incidence of Benefits	2.07	2.95	0.88	2.33**
Use	9.13	8.3	–0.83	0.35
Transfer Regulations				
Total Score	17.07	20.55	3.48	1.70*
Openness	8.60	10.50	1.90	2.11**
Criterion 3 – Theory and Model Documentation	1.33	2.00	.67	1.88*
Criterion 4 – Clarity	1.80	2.45	.65	2.37**
Analysis				
Criterion 5 – Outcomes	0.87	1.31	0.45	1.61
Question 5A – Articulate Desired Outcome	1.80	2.45	0.65	1.52
Question 5D – Evidence Regulation Will Affect Outcome	0.20	1.00	0.80	2.86***
Criterion 6 – Systemic Problem	0.60	1.00	0.40	1.79*
Question 6B – Coherent Theory of Systemic Problem	0.47	0.86	0.40	1.64
Question 7A – List Alternatives	1.07	1.91	0.84	2.18**
Criterion 8 – Cost-Benefit Analysis	1.07	1.36	0.30	1.51
Use	4.93	5.14	0.20	0.83

Statistical significance: *90 percent ** 95 percent

Maximum possible score on individual criteria or questions = 5.

Table 6 shows changes in mean scores calculated separately for transfer and non-transfer regulations. We report statistics for individual criteria or questions only when the differences approach statistical significance.

For non-transfer regulations, there are very few improvements. Average Openness scores improved from 12.27 points to 13.65 points. The difference is almost statistically significant at the 95 percent level. Within the Analysis category, there is weak evidence of improvement on criterion 5 (Outcomes), largely because agencies provided more evidence that the regulation will accomplish the intended outcomes. Criterion 8 (Cost-Benefit Analysis) also saw improvement due to better scores on three questions: question 8C (Effects on Prices of Goods and Services), question 8G (Evaluation of Cost-Effectiveness) and question 8I (Incidence of Benefits). These changes are consistent with the administration's goals of improving the transparency of the regulatory process, identifying benefits of regulation, and expanding the focus on distributional issues. We caution, however, that the changes are quite small, and the improvements under the Analysis category mostly just move the average scores closer to 3.

Transfer regulations show slightly more improvement than non-transfer regulations. The average Openness score improved, largely due to increases in scores on criterion 3 (Theory and Model Documentation) and criterion 4 (Clarity). The improvement on criterion 4 is actually significant at the 98 percent level. All four Analysis criteria saw higher average scores in 2009 than in 2008. However, all of these scores remained well below 2 in 2009. This indicates only that more analyses presented a small amount of discussion or evidence relevant to these criteria instead of saying nothing. While these improvements are certainly welcome, the low levels of the scores indicate that analysis of transfer regulations has a long way to go before it is as good as the analysis of non-transfer regulations.

We draw the following conclusions from this breakdown between transfer and non-transfer regulations:

- The only category of criteria that appears to have improved for both transfer and non-transfer regulations is Openness.
- The few improvements in the Analysis criteria for non-transfer regulations seem consistent with the Obama administration's regulatory priorities.
- Improvements in some of the Analysis criteria for transfer regulations largely reflect the presence of some content or assertions where previously there were none.
- Regulators made little commitment to retrospective analysis of regulations proposed in either year.

2.5 Total Scores by Agency

Another way to control for factors that might affect the average quality or use of regulatory analysis is to break scores down by agency. Some agencies may do a better job of

analysis than others. Some may tackle analytical problems that are inherently more difficult. Yet others may have different mixes of transfer regulations and non-transfer regulations. Table 7 presents average scores by agency for 2008 and 2009, with and without transfer regulations.

When all regulations are included, five agencies increased their average total scores in 2009, and five agencies reduced their average total scores. When transfer regulations are excluded, four agencies increased their average total scores in 2009, and four agencies reduced their average total scores. Given that most agencies proposed small numbers of economically significant regulations, few agencies proposed comparable numbers of economically significant regulations in both years, and six agencies proposed economically significant regulations only in 2008, it is difficult to infer any general pattern of improvement or deterioration from these results.

However, it is clear that the presence or absence of transfer regulations in a given year has a big effect on some agencies' scores. Scores for the Departments of Energy, Homeland Security, Transportation, and Health and Human Services climb noticeably in one or both years when transfer regulations are excluded. Omitting transfer regulations, Energy and Homeland Security leapfrog Agriculture, EPA, and Interior in the 2009 rankings, and HHS edges past Labor.

Table 7: Average Total Scores by Agency

All Regulations	2009 Average Score	# of Regulations	2008 Average Score	# of Regulations	2008-09 Change
Joint DOT/EPA	48.0	1	NA	0	NA
USDA	38.0	1	28.0	1	+10.0
Interior	34.0	1	27.3	4	+6.7
EPA	32.5	9	39.5	2	–7.0
DHS	30.0	2	38.0	2	–8.0
Energy	27.4	5	27.0	1	+0.4
DOT	24.7	3	32.3	6	–7.6
Labor	24.0	1	34.1	6	–10.1
HHS	23.6	12	20.7	11	+2.9
Education	22.0	5	22.0	2	0
HUD	18.0	1	41.0	1	–23.0
Veterans	17.0	1	10.0	1	+7.0
Justice		0	35.0	3	NA
Treasury		0	27.0	1	NA
Fed Acquisition		0	24.0	1	NA
State		0	13.0	1	NA
Defense		0	12.0	1	NA
SSA		0	7.0	1	NA
Non-Transfer Regulations	**2009 Score**	**# of Regulations**	**2008 Score**	**# of Regulations**	**2008-09 Change**
Joint DOT/EPA	48.0	1	NA	0	NA
Energy	40.7	3	27.0	1	+13.7
DHS	40.0	1	38.0	1	+2.0
USDA	38.0	1	28.0	1	+10.0
EPA	32.5	9	39.5	2	–7.0
Interior	34.0	1	27.3	4	+6.7
DOT	29.0	2	32.3	6	–3.3
HHS	28.0	1	29.0	2	–1.0
Labor	24.0	1	34.1	6	–10.1
HUD		0	41.0	1	NA
Justice		0	35.0	3	NA
Treasury		0	27.0	1	NA
Federal Acquisition		0	24.0	1	NA

Maximum possible average total score = 60.

5. Use of Analysis

Previous research found that use of the analysis was positively correlated with the quality of the analysis in 2008. Scores on criteria 9–12, which evaluate use of analysis, are positively correlated with the Analysis score and overall quality, defined as the sum of the Openness and Analysis scores, criteria 1–8 (Ellig and McLaughlin 2010). An additional year gives us a larger data set to test whether this relationship still held and whether it changed in 2009.

5.1 Total Use Score

Table 8 shows the results from regressing the Use score on the Quality score, along with several control variables. A one point increase in the Quality score is associated with a 0.25–0.31 point increase in the Use score, and this correlation is highly statistically significant. The result also seems quantitatively significant. The standard deviation of Quality is 6.86; a one-standard-deviation change in Quality implies about a two-point change in Use. Given that the mean Use score is 7.21, variation in Quality seems to explain a great deal of the variation in Use.[6]

The Year 2008 dummy tests whether Use scores tend to be different in 2008 and 2009. It shows that Use is about 1.3 points higher in 2008, after controlling for Quality. This result indicates a 1.3-point shift in the intercept of the regression equation. One might also speculate that the slope of the line might be different in the two years. When we run the same regressions using Quality × Year as an explanatory variable instead of the year dummy, we get roughly the same results with a bit worse statistical fit.[7]

The year appears to make a big difference, considering that the mean Use score is only 7.21 and its standard deviation is 3.45. However, it would be a mistake to portray the first year of the Obama administration as a retreat from stellar use of analysis in the Bush administration. Figure 3 shows the distribution of Use scores in 2008 and 2009. Neither year shows more than middling use of analysis. The principal difference is that the middle class shrinks in 2009, with more regulations that either fail to use the analysis or make only a passing reference to it.

Models 3 and 4 in table 8 include control variables for transfer regulations, to see if tendencies to use analysis differ for this type of regulation. In general, the relationship between Use and Quality seems no different for transfer regulations that for non-transfer regulations. However, the transfer regulations that implement provisions of the American Recovery and Reinvestment Act appear to be marginally more likely to use the analysis. The Use score for these five regulations averages 7 points, compared to an average of 5 points for other transfer regulations in 2009. The difference in averages stems from relatively high Use scores for two Education Department regulations that provide grants to states for education reform: the School Improvement Grants (13 points) and the Race to the Top Fund (9 points). School Improvement Grants earned a relatively high Use score because the regulations focus the grants on education reforms that have research demonstrating their effectiveness, and because the regulation includes

[6] Using only the four Analysis criteria 5–8 as the independent variable produces roughly the same results with a bit worse statistical fit.

[7] Results are in appendix 5.

provisions to gather data and evaluate the effectiveness of the reforms funded by the spending. The Race to the Top fund did not make much use of analysis to create the regulation, but it did establish goals and require states to submit data to evaluate the effectiveness of the reforms funded by the regulation.

5.2 Ex-Ante Use vs. Retrospective Analysis

The total Use score consists of scores for two types of criteria that might be affected differently by the quality of analysis. Criteria 9 and 10 assess the extent to which the agency used the analysis to make decisions in the proposed regulation. Criteria 11 and 12 assess the extent to which the agency provided for retrospective analysis in either the preamble to the regulation or the Regulatory Impact Analysis. To see whether Quality has different effects on these variables, table 9 replicates the regressions in table 8 using criteria 9–10 as a dependent variable and using criteria 11–12 as a dependent variable.

The quality of analysis clearly has a positive, statistically significant correlation with both the use of analysis to craft the regulation and on provisions for retrospective analysis. The effect is about twice as large for the former as for the latter.

The Year dummy variable, however, shows that Quality has a differential effect in 2008 only for use of analysis to craft the regulation. Agencies were no more likely to make provisions for retrospective analysis in 2008 than in 2009. This is perhaps unsurprising, given that Executive Order 12866 and Circular A-4 place little emphasis on retrospective analysis.

Finally, the Transfer dummy variable indicates that agencies were neither more nor less likely to use analysis in crafting transfer regulations or provide for retrospective analysis. The Recovery Act dummy shows that these regulations tend to have better retrospective analysis provisions—again largely because of the higher scores of the two education reform regulations.

These regressions identify some significant correlations, but we are not sure if they imply causation. Perhaps decision makers choose to use analysis when they are confident it is higher quality. Or perhaps analysts prepare better analysis when they are confident the decision makers will use it. Similarly, the higher Use scores in 2008 might reflect a stronger commitment to using regulatory analysis in the Bush administration, but other hypotheses might also explain the difference. To the extent that regulations proposed in 2009 were already in process in 2008, perhaps the Bush administration simply pushed out the regulations that were better-supported by analysis in 2008 and left the rest for the Obama administration to deal with. Alternatively, the difference could just reflect the fact that 2009 was a transition year (perhaps because new members of an administration have to "learn" how to use economic analysis). Forthcoming data on the quality and use of regulatory analysis in 2010 may allow us to test these and other hypotheses. Systematic interviews of federal regulatory personnel, such as those conducted by Williams (2008), could provide additional (and perhaps even better) insights.

Table 8: Quality of Analysis vs. Use of Analysis

Explanatory Variables	Dependent Variable: Use of Analysis Score (Criteria 9–12) (1)	(2)	(3)	(4)
Quality (Criteria 1–8)	0.30 [6.98***]	0.31 [7.28***]	0.27 [3.99***]	0.25 [3.83***]
Year 2008 Dummy		1.34 [2.31***]	1.15 [1.85*]	1.33 [2.14**]
Transfer Regulation			–0.80 [–0.85]	–1.19 [–1.25]
Recovery Act Regulation				2.25 [1.70*]
Constant	1.14 [1.24]	.33 [0.34]	1.64 [0.91]	1.82 [1.02]
N	87	87	87	87
Adjusted R^2	0.36	0.39	0.39	0.40

Ordinary least squares regressions; t-statistics in parentheses.
Statistical significance: ***1 percent **5 percent *10 percent

Figure 3: Use of Analysis Scores by Quintile

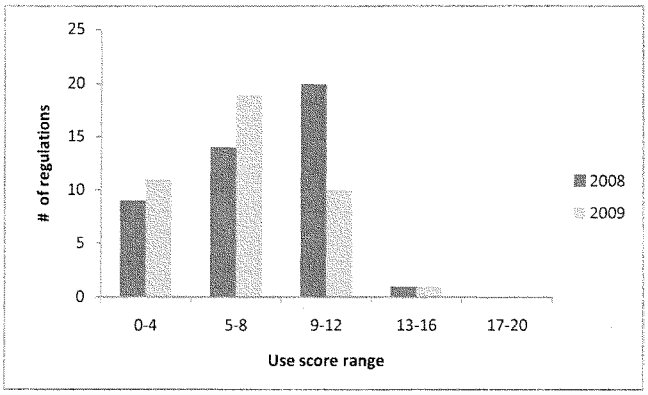


Table 9: Quality of Analysis vs. Separate Scores for Ex-Ante and Retrospective Analysis

Explanatory Variables	Dependent Variable: Ex Ante Use of Analysis (Criteria 9–10) (1)	(2)	(3)	(4)
Quality (Criteria 1–8)	0.20 [6.05***]	0.20 [6.30***]	0.17 [3.46***]	0.17 [3.37***]
Year 2008 Dummy		0.94 [2.18**]	0.83 [1.78*]	0.87 [1.82*]
Transfer Regulation			–0.51 [–0.72]	–0.58 [–0.80]
Recovery Act Regulation				0.45 [0.45]
Constant	0.34 [0.50]	–0.22 [–0.32]	0.60 [0.44]	0.64 [0.47]
N	87	87	87	87
Adjusted R^2	0.29	0.32	0.32	0.31

Explanatory Variables	Dependent Variable: Provisions for Retrospective Analysis (Criteria 11–12) (1)	(2)	(3)	(4)
Quality (Criteria 1–8)	0.11 [3.98***]	0.11 [4.04***]	0.09 [2.19**]	0.08 [2.00**]
Year 2008 Dummy		0.39 [1.06]	0.32 [0.81]	0.47 [1.29]
Transfer Regulation			-0.29 [–0.49]	–0.61 [–1.01]
Recovery Act Regulation				1.80 [2.15**]
Constant	0.79 [1.39]	0.56 [0.91]	1.04 [0.90]	1.18 [1.04]
N	87	87	87	87
Adjusted R^2	0.15	0.15	0.14	0.18

Ordinary least squares regressions; t-statistics in parentheses.
Statistical significance: ***1 percent **5 percent *10 percent

5.3 Use by Individual Agencies

Is the reduction in Use scores widespread, or concentrated in a few agencies? Table 10 sheds light on this question by calculating changes in average Use scores for individual agencies, including and excluding transfer regulations.

Including all regulations, four agencies improved their average Use scores between 2008 and 2009: Interior, Agriculture, Health and Human Services, and Veterans Affairs. Except for Agriculture, all of these improvements were less than one point. Seven agencies saw their average Use scores fall, and all of these reductions exceeded two points. Thus, improvements are small, and reductions are widespread.

Some of these changes were driven by the increased proportion of transfer regulations in 2009. Excluding transfer regulations, four agencies increased their Use scores: Interior, Agriculture, Health and Human Services, and Energy. Interior's score increased by just 0.7 point; all the others increased by at least two points. Four agencies saw their Use scores fall when transfer regulations are excluded: Homeland Security, Transportation, EPA, and Labor. Each of these four reductions was two points or greater. Excluding transfer regulations thus suggests that some agencies had noticeable improvements in their Use scores, while about the same number saw noticeable reductions.

The changing mix of transfer vs. non-transfer agencies had a big effect on results for four agencies: Energy, Homeland Security, Transportation, and Health and Human Services. Excluding transfer regulations actually increases Energy's Use score; with transfer regulations, Energy's Use score falls. Excluding transfer regulations leads to a much bigger increase in Health and Human Services' Use score: a 5.5 point increase instead of a 0.7 point increase. Finally, excluding transfer regulations cuts the reduction in Homeland Security's and Transportation's Use scores by more than half.

The regression equations in tables 8 and 9 show that use of analysis to make decisions about regulations is lower in 2009, even after controlling for transfer regulations. Tabulations in table 10 suggest that the primary reason for the statistically significant decline in Use scores in 2009 appears to be the reductions in Use scores at Transportation and EPA. Of all the agencies whose average Use scores fell, Transportation proposed two regulations in 2009 and EPA proposed nine. No other agency whose Use score for non-transfer regulations fell in 2009 proposed more than one non-transfer regulation in 2009.

In fairness, we should also note that the combined DOT/EPA CAFÉ/greenhouse gas emissions regulation earned the highest Use score in 2009: 15 points. In addition, the caveat we applied to table 7 applies to table 10 as well. Because the number of regulations is so small, it is hard to make reliable generalizations about particular agencies. For that, more years of data are needed.

Table 10: Use by Individual Agencies

All Regulations	2009 Average Score	# of Regulations	2008 Average Score	# of Regulations	2008-09 Change
Joint DOT/EPA	15.0	1	NA	0	NA
Interior	9.0	1	8.3	4	+0.7
USDA	8.0	1	5.0	1	+3.0
Energy	7.4	5	10.0	1	–2.6
EPA	7.2	9	10.5	2	–3.3
Education	7.0	5	9.0	2	–2.0
DHS	6.5	2	12.0	2	–5.5
HHS	5.6	12	5.5	11	+0.1
HUD	5.0	1	10.0	1	–5.0
DOT	4.5	3	10.0	6	–5.5
Labor	4.0	1	8.7	6	–4.7
Veterans	3.0	1	2.0	1	+1.0
Justice		0	11.7	3	NA
Treasury		0	9.0	1	NA
Fed Acquisition		0	4.0	1	NA
SSA		0	3.0	1	NA
State		0	2.0	1	NA
Defense		0	1.0	1	NA
Non-Transfer Regulations	**2009 Score**	**# of Regulations**	**2008 Score**	**# of Regulations**	**2008-09 Change**
Joint DOT/EPA	15.0	1	NA	0	NA
Energy	12.0	3	10.0	1	+2.0
DHS	10.0	1	12.0	1	–2.0
Interior	9.0	1	8.3	4	+0.7
DOT	8.5	2	10.0	6	–2.5
USDA	8.0	1	5.0	1	+3.0
EPA	7.2	9	10.5	2	–3.3
HHS	7.0	1	2.0	2	+5.0
Labor	4.0	1	8.7	6	–4.7
HUD		0	10.0	1	NA
Justice		0	11.7	3	NA
Treasury		0	9.0	1	NA
Federal Acquisition		0	4.0	1	NA

Maximum possible Use score = 20.

6. Conclusions

This study expands on existing research by applying a consistent set of standards to assess the quality and use of regulatory analysis for all economically significant regulations proposed in two different years. We find that the average quality of analysis is not high. The quality and use of regulatory analysis is especially poor for transfer regulations that define how the federal government will spend or collect money. But Regulatory Impact Analyses and *Federal Register* preambles present many examples of best practices that could improve the quality and use of analysis significantly if they were diffused more widely.

Our comparison of regulations in 2008 and 2009 generates several insights relevant to contemporary regulatory policy discussions. We find very little evidence that the quality of regulatory analysis changed between 2008 and 2009. The most significant improvement occurred in accessibility of regulatory analyses on the Internet. While this is a welcome improvement that is consistent with the Obama administration's focus on government transparency, improvements on a few other criteria were generally small and, at best, usually improved average scores from poor in 2008 to middling in 2009. In addition, we find substantial evidence that agencies were less likely to use the analysis to make decisions about proposed regulations in 2009 than in 2008.

This research also raises numerous questions that deserve further inquiry. We have not, by and large, identified why the quality and use of regulatory analysis exhibits the patterns revealed in this paper. For example, it is not obvious why some non-transfer regulations receive better analysis than others. Subject matter, deadlines, differing statutory mandates, explicit policy preferences, or department-specific factors may be part of the explanation.

It is also not clear why the quality of regulatory analysis changed very little between 2008 and 2009. Does this mean career staffers at agencies and/or OIRA consciously promote continuity between administrations? Another factor that may have played a role is that it is likely that the Bush administration focused greater effort on improving the quality of its "midnight" final regulations in 2008 relative to its proposed regulations, while the Obama administration is likely to have placed a greater focus on its own newly proposed regulations. This would suggest that the quality of analysis for proposed rules should have improved in 2009—unless most of the regulations proposed in 2009 were already in the pipeline in 2008. Research on what happened to the quality and use of analysis for final rules might shed further light on this issue.

Our data also indicate a statistically significant reduction in OIRA review time for non-transfer regulations in 2009 (from 66 to 40 days), but not for transfer regulations, which averaged about 35 days in both years. McLaughlin (2010) finds that midnight regulations receive shorter review times at OIRA. Whether OIRA review time impacts quality and use is an area ripe for further research.

Finally, we do not know why the use of regulatory analysis to make regulatory decisions declined in 2009. Indeed, we are not even sure if good analysis leads to use in decisions, or if decision makers' openness to analysis promotes good analysis, or if some third set of factors

causes both of these. Creating consistent data on the quality and use of regulatory analysis is the first step toward answering these questions.

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Appendix 1

Major Factors Considered When Evaluating Each Criterion

Note: Regardless of how they are worded, all questions involve qualitative analysis of how well the RIA and the *Federal Register* notice address the issue, rather than "yes/no" answers.

Openness

1. How easily were the RIA, the proposed rule, and any supplementary materials found online?

How easily can the proposed rule and RIA be found on the agency's website?
How easily can the proposed rule and RIA be found on Regulations.gov?
Can the proposed rule and RIA be found without contacting the agency for assistance?

2. How verifiable are the data used in the analysis?

Is there evidence that the analysis used data?
Does the analysis provide sufficient information for the reader to verify the data?
How much of the data are sourced?
Does the analysis provide direct access to the data via links, URLs, or provision of data in appendices?
If data are confidential, how well does the analysis assure the reader that the data are valid?

3. How verifiable are the models and assumptions used in the analysis?

Are models and assumptions stated clearly?
How well does the analysis justify any models or assumptions used?
How easily can the reader verify the accuracy of models and assumptions?
Does the analysis provide citations to sources that justify the models or assumptions?
Does the analysis demonstrate that its models and assumptions are widely accepted by relevant experts?
How reliable are the sources? Are the sources peer-reviewed?

4. Was the agency's analysis comprehensible to an informed layperson?

How well can a non-specialist reader understand the results or conclusions?
How well can a non-specialist reader understand how the analysis reached the results?
How well can a specialist reader understand how the analysis reached the results?
Are the RIA and relevant portions of the *Federal Register* notice written in "plain English"? (Light on technical jargon and acronyms, well-organized, grammatically correct, direct language used.)

Analysis

For each Analysis criterion, the lettered sub-questions each receive a score of 0–5, and these are averaged and rounded to produce the score on the criterion.

5. How well does the analysis identify the desired outcomes and demonstrate that the regulation will achieve them?

    A. How well does the analysis clearly identify ultimate outcomes that affect citizens' quality of life?
    B. How well does the analysis identify how these outcomes are to be measured?
    C. Does the analysis provide a coherent and testable theory showing how the regulation will produce the desired outcomes?
    D. Does the analysis present credible empirical support for the theory?
    E. Does the analysis adequately assess uncertainty about the outcomes?

6. How well does the analysis identify and demonstrate the existence of a market failure or other systemic problem the regulation is supposed to solve?

    A. Does the analysis identify a market failure or other systemic problem?
    B. Does the analysis outline a coherent and testable theory that explains why the problem (associated with the outcome above) is systemic rather than anecdotal?
    C. Does the analysis present credible empirical support for the theory?
    D. Does the analysis adequately assess uncertainty about the existence and size of the problem?

7. How well does the analysis assess the effectiveness of alternative approaches?

    A. Does the analysis enumerate other alternatives to address the problem?
    B. Is the range of alternatives considered narrow or broad?
    C. Does the analysis evaluate how alternative approaches would affect the amount of the outcome achieved?
    D. Does the analysis adequately address the baseline—what the state of the world is likely to be in the absence of further federal action?

8. How well does the analysis assess costs and benefits?

    A. Does the analysis identify and quantify incremental costs of all alternatives considered?
    B. Does the analysis identify all expenditures likely to arise as a result of the regulation?
    C. Does the analysis identify how the regulation would likely affect the prices of goods and services?
    D. Does the analysis examine costs that stem from changes in human behavior as consumers and producers respond to the regulation?
    E. Does the analysis adequately address uncertainty about costs?
    F. Does the analysis identify the approach that maximizes net benefits?

G. Does the analysis identify the cost-effectiveness of each alternative considered?
H. Does the analysis identify all parties who would bear costs and assess the incidence of costs?
I. Does the analysis identify all parties who would receive benefits and assess the incidence of benefits?

Use

9. Does the proposed rule or the RIA present evidence that the agency used the Regulatory Impact Analysis?

Does the proposed rule or the RIA assert that the analysis of outcomes, benefits, the systemic problem, alternatives, or costs affected any decisions?
How many aspects of the proposed rule did the analysis affect?
How significant are the decisions the analysis affected?

10. Did the agency maximize net benefits or explain why it chose another option?

Did the analysis calculate net benefits of one or more options so that they could be compared?
Did the analysis calculate net benefits of all options considered?
Did the agency either choose the option that maximized net benefits or explain why it chose another option?
How broad a range of alternatives did the agency consider?

11. Does the proposed rule establish measures and goals that can be used to track the regulation's results in the future?

Does the RIA or *Federal Register* notice contain analysis or results that could be used to establish goals and measures to assess the results of the regulation in the future?
In the RIA or the *Federal Register* notice, does the agency commit to performing some type of retrospective analysis of the regulation's effects?
Does the agency explicitly articulate goals for at major outcomes the rule is supposed to affect?
Does the agency establish measures for major outcomes the rule is supposed to affect?
Does the agency set targets for measures of major outcomes the rule is supposed to affect?

12. Did the agency indicate what data it will use to assess the regulation's performance in the future and establish provisions for doing so?

Does the RIA or *Federal Register* notice demonstrate that the agency has access to data that could be used to assess some aspects of the regulation's performance in the future?
Would comparing actual outcomes to outcomes predicted in the analysis generate a reasonably complete understanding of the regulation's effects?
Does the agency suggest it will evaluate future effects of the regulation using data it has access to or commits to gathering?

Does the agency explicitly enumerate data it will use to evaluate major outcomes the regulation is supposed to accomplish in the future?
Does the analysis demonstrate that the agency understands how to control for other factors that may affect outcomes in the future?

Appendix 2: Crosswalk of 2010 OMB Regulatory Impact Analysis Checklist with Mercatus Regulatory Report Card evaluation criteria

OMB Checklist	Mercatus Evaluation Criteria
Does the RIA include a reasonably detailed description of the need for the regulatory action?	Criterion 6: How well does the analysis demonstrate the existence of a market failure or other systemic problem the regulation is supposed to solve?
Does the RIA include an explanation of how the regulatory action will meet that need?	Criterion 5: How well does the analysis identify the desired outcomes and demonstrate that the regulation will achieve them?
Does the RIA use an appropriate baseline (i.e., best assessment of how the world would look in the absence of the proposed action)?	Criterion 7, question D: Does the analysis adequately assess the baseline—what the state of the world is likely to be in the absence of further federal action?
Is the information in the RIA based on the best reasonably obtainable scientific, technical, and economic information and is it presented in an accurate, clear, complete, and unbiased manner?	Criterion 2: How verifiable are the data used in the analysis? Criterion 3: How verifiable are the models or assumptions used in the analysis? Criterion 4: Was the analysis comprehensible to an informed layperson? *Criterion 3 includes an assessment of whether the models and assumptions are based on peer-reviewed or otherwise reliable publications. However, the Mercatus evaluation does not assess the quality of the underlying science.*
Are the data, sources, and methods used in the RIA provided to the public on the Internet so that a qualified person can reproduce the analysis?	Criterion 1 takes the first step by assessing how easily the RIA itself can be found on the Internet. Criteria 3 and 4 include an assessment of how easily the reader could find the underlying data, sources, and methods from information or links provided in the RIA or the *Federal Register* notice.
To the extent feasible, does the RIA quantify and monetize the anticipated benefits from the regulatory action?	Criterion 5, question 2: How well does the analysis identify how the outcomes are to be measured?

To the extent feasible, does the RIA quantify and monetize the anticipated costs?	Multiple questions under criterion 8 (Benefits and Costs) assess how well the analysis identifies, quantifies, and monetizes costs.
Does the RIA explain and support a reasoned determination that the benefits of the intended regulation justify its costs (recognizing that some benefits and costs are difficult to quantify)?	Criterion 8, question F: Does the analysis identify the approach that maximizes net benefits? Criterion 8, question G: Does the analysis identify the cost-effectiveness of each alternative considered?
Does the RIA assess the potentially effective and reasonably feasible alternatives?	Criterion 7: How well does the analysis assess the effectiveness of alternative approaches?
Does the preferred option have the highest net benefits (including potential economic, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires a different approach?	Criterion 10: Did the agency maximize net benefits or explain why it chose another option?
Does the RIA include an explanation of why the planned regulatory action is preferable to the identified potential alternatives?	Criterion 9: Does the proposed rule or RIA present evidence that the agency used the Regulatory Impact Analysis? Criterion 10: Did the agency maximize net benefits or explain why it chose another option?
Does the RIA use appropriate discount rates for the benefits and costs that are expected to occur in the future?	Considered under criterion 5, question 2: How well does the analysis identify how the outcomes are to be measured?, as well as several questions about measurement and comparison of benefits and costs under criterion 8 (Benefits and Costs).
Does the RIA include, if and where relevant, an appropriate uncertainty analysis?	Criterion 5, question E: Does the analysis adequately assess uncertainty about the outcomes? Criterion 6, question D: Does the analysis adequately assess uncertainty about the existence and size of the problem? Criterion 8, question E: Does the analysis adequately address uncertainty about costs?

Does the RIA include, if and where relevant, a separate description of the distributive impacts and equity (including transfer payments and effects on disadvantages or vulnerable populations)?	Criterion 8, question H: Does the analysis identify all parties who would bear costs and assess the incidence of costs? Criterion 8, question I: Does the analysis identify all parties who would receive benefits and assess the incidence of benefits?
Does the analysis include a clear, plain-language executive summary, including an accounting statement that summarizes the benefit and cost estimates for the regulatory action under consideration, including the qualitative and non-monetized benefits and costs?	Criterion 4: Was the analysis comprehensible to an informed layperson?
Does the analysis include a clear and transparent table presenting (to the extent feasible) anticipated benefits and costs (qualitative and quantitative)?	Criterion 4: Was the analysis comprehensible to an informed layperson?
Goals and measures to assess results of the regulation in the future – No content.	Criterion 11: Does the proposed rule establish measures and goals that can be used to track the regulation's results in the future?
Provisions for gathering data to assess results of the regulation in the future – No content.	Criterion 12: Did the agency indicate what data it will use to assess the regulation's performance in the future and establish provisions for doing so?

Appendix 3: Summary Statistics on All Criteria and Sub-Questions

2008

Variable	N	Mean	Std. Dev.	Min	Max
Total	45	27.30	9.46	7	43
Openness	45	11.04	3.26	4	18
Analysis	45	8.53	4.48	0	16
Use	45	7.73	3.31	1	14
Criterion 1	45	3.53	1.36	0	5
Criterion 2	45	2.24	1.19	0	5
Criterion 3	45	2.33	1.30	0	5
Criterion 4	45	2.93	1.21	0	5
Criterion 5	45	2.36	1.40	0	5
5A	45	3.31	1.52	0	5
5B	45	2.71	1.74	0	5
5C	45	2.22	1.59	0	5
5D	45	1.67	1.60	0	5
5E	45	2.00	1.86	0	5
Criterion 6	45	1.80	1.47	0	5
6A	45	2.31	1.68	0	5
6B	45	2.00	1.75	0	5
6C	45	1.71	1.59	0	5
6D	45	0.82	1.28	0	5
Criterion 7	45	2.29	1.36	0	4
7A	45	2.78	1.86	0	5
7B	45	1.96	1.45	0	5
7C	45	1.98	1.64	0	5
7D	45	2.04	1.30	0	5
Criterion 8	45	2.09	0.996	0	4
8A	45	2.93	1.16	0	5
8B	45	3.18	1.01	1	5
8C	45	1.38	1.34	0	5
8D	45	1.56	1.47	0	5
8E	45	1.78	1.80	0	5
8F	45	1.91	1.66	0	5
8G	45	1.04	1.17	0	5
8H	45	2.82	1.13	1	5
8I	45	1.60	1.34	0	5
Criterion 9	45	2.44	1.32	0	5
Criterion 10	45	2.20	1.46	0	5
Criterion 11	45	1.36	1.03	0	5
Criterion 12	45	1.73	1.10	0	5

2009

Variable	N	Mean	Std. Dev.	Min	Max
Total	42	27.03	9.37	5	48
Openness	42	12.00	2.82	3	17
Analysis	42	8.38	4.52	1	18
Use	42	6.64	3.56	0	15
Criterion 1	42	4.05	0.85	2	5
Criterion 2	42	2.50	1.50	0	5
Criterion 3	42	2.62	1.23	0	5
Criterion 4	42	2.83	0.88	1	4
Criterion 5	42	2.38	1.43	0	5
5A	42	3.36	1.61	0	5
5B	42	2.52	1.63	0	5
5C	42	2.21	1.60	0	5
5D	42	2.02	1.56	0	5
5E	42	1.76	1.69	0	5
Criterion 6	42	1.60	1.15	0	4
6A	42	2.21	1.70	0	5
6B	42	1.50	1.29	0	4
6C	42	1.21	1.24	0	4
6D	42	0.88	1.31	0	4
Criterion 7	42	2.21	1.42	0	5
7A	42	2.83	1.58	0	5
7B	42	1.86	1.32	0	5
7C	42	1.90	1.76	0	5
7D	42	1.93	1.44	0	5
Criterion 8	42	2.19	1.15	0	5
8A	42	2.83	1.34	0	5
8B	42	3.24	1.32	0	5
8C	42	2.07	1.69	0	5
8D	42	1.60	1.48	0	5
8E	42	1.76	1.59	0	5
8F	42	1.33	1.66	0	5
8G	42	1.24	1.54	0	5
8H	42	3.00	1.17	0	5
8I	42	1.86	1.47	0	5
Criterion 9	42	2.24	1.36	0	5
Criterion 10	42	1.62	1.56	0	5
Criterion 11	42	1.29	0.97	0	4
Criterion 12	42	1.50	1.04	0	4

Appendix 4: Average changes without separating transfer and non-transfer regulations

The table below shows the change in average scores on individual criteria and on sub-questions for the Analysis criteria. We only report average scores whose differences are statistically significant at the 85 percent level or higher. Even for individual criteria or questions, there is very little evidence that average scores changed much between 2008 and 2009. As noted in the text, some of the changes identified below are driven by the increased proportion of transfer regulations in 2009.

Score Changes on Individual Criteria and Questions

	2008 (n=45)	**2009** (n=42)	**Change**	**T-stat.**
Openness				
Criterion 1 – Accessibility	3.53	4.05	0.51	2.10**
Analysis				
Question 6B – Coherent Theory of Systemic Problem	2.00	1.50	–0.50	1.60
Question 6C – Empirical Evidence of Systemic Problem	1.71	1.21	–0.50	1.62
Question 8C – Effects on Prices of Goods and Services	1.38	2.07	0.69	2.13**
Question 8F – Identifies approach that maximizes net benefits	1.91	1.33	–0.58	1.62
Use				
Criterion 10 – Decision Cognizant of Net Benefits	2.20	1.62	–0.58	1.80*

Statistical significance: *90 percent **95 percent
Maximum possible score on any criterion or question = 5 points.

The increase on criterion 1 (Accessibility) indicates that agency regulatory analyses were somewhat easier to find online in 2009 than in 2008. This reflects the fact that regulatory analyses were easier to find on agency websites and *Federal Register* preambles provided clearer information about how to obtain a copy of the Regulatory Impact Analysis. Some of the improvement may also stem from the redesign of the regulations.gov web site, which may have made regulations and accompanying analysis easier to find.

The lower average scores on questions 6B (Coherent Theory of Systemic Problem) and 6C (Empirical Evidence of Systemic Problem) suggest that agencies may be somewhat less likely to demonstrate that proposed regulations actually address a market failure, government failure, or other systemic problem in 2009. Average scores were already quite low in 2008; this weakness may have gotten even weaker in 2009.

The higher average score on criterion 8C (Effects on Prices of Goods and Services) indicates that agencies were more likely in 2009 to discuss the effects of regulatory costs on the prices of goods and services. This is something that agencies usually do either reasonably well or pretty poorly; there are few mid-range scores. The increase from 1.38 to 2.07 implies that this improvement occurred only for a few regulations, or that agencies provided just a bit more discussion or evidence in place of unsupported assertions.

The lower scores on question 8F (Identifies Alternative that Maximizes Net Benefits) and criterion 10 (Decision Cognizant of Net Benefits) suggest that regulatory analyses in 2009 were less likely to assess the net benefits of alternatives, and decision makers were less likely to consider net benefits when choosing among alternatives. Agencies usually do these things either reasonably well or not at all, so this shift suggests that fewer regulations in 2009 identified or considered net benefits of alternatives.

Appendix 5: Use vs. Quality Employing Quality x Year Interaction Variable

	Dependent Variable: Use of Analysis Score (Criteria 9-12)			
Explanatory Variables	**(1)**	**(2)**	**(3)**	**(4)**
Quality (Criteria 1-8)	0.30 [6.98***]	0.28 [6.26***]	0.23 [3.67***]	0.22 [3.41***]
Year 2008 Dummy X Quality		0.06 [2.21***]	0.05 [1.79*]	0.06 [1.98**]
Transfer Regulation			−0.88 [−0.95]	−1.28 [−1.34]
Recovery Act Regulation				2.07 [1.57]
Constant	1.14 [1.24]	1.06 [1.18]	1.64 [0.91]	2.70 [1.63]
N	87	87	87	87
Adjusted R^2	0.36	0.39	0.38	0.40

Ordinary least squares regressions; t-statistics in parentheses.
Statistical significance: ***1 percent **5 percent *10 percent

Chairman ISSA. Thank you. I now recognize myself for 5 minutes.

Mr. Gattuso, in your opening statement you talked about President Obama's latest executive order. I have a concern. As I understand the executive order, it doesn't cover independent agencies. Is that correct?

Mr. GATTUSO. That is correct.

Chairman ISSA. So FCC, SEC. I mean, the list is——

Mr. GATTUSO. The Consumer——

Chairman ISSA. What, two-thirds of government regulations are in independent agencies. If you leave the EPA out, maybe more than that?

Mr. GATTUSO. In terms of actually calculated cost, EPA is by far the largest, but a lot of the independent agencies, especially at the FCC, do not calculate costs, do not do a cost-benefit analysis, but it is the Federal Communications Commission, the Federal Trade Commission, the Securities and Exchange Commission. So it is a long list.

Chairman ISSA. The industry that I came from, the electronics industry, FCC was king. And I didn't get to say this in the first round, but maybe because we have such a scholarly round, the FCC's failure to supply bandwidth solutions for more data capability that the market wants, that Mr. Cummings wants, that my constituent want, is that an impediment? I mean, are those some of the impediments where we see the FCC passing rules, but we don't see them using their assets to provide the expansion of the economy?

Mr. GATTUSO. It certainly is an impediment. The FCC actually has improved its policies over the past decade or so, allowing more flexible use of spectrum, but there is a lot still to be done. If I mention also in independent agencies that some reports have shed that the President is unable, legally, to involve the independent agencies in his review.

Chairman ISSA. So what you are saying is the President can't, but we could?

Mr. GATTUSO. No, what I am saying is that those reports are wrong.

Chairman ISSA. Oh.

Mr. GATTUSO. In 1991——

Chairman ISSA. So he could and we could require this.

Mr. GATTUSO. In fact, it has been done before. In 1992, while President Bush had a regulatory review and moratorium in which every independent agency participated, all that was required was for the president to ask the chairman of each agency to participate. Everyone said yes. And I think President Obama could get the same result if he were to ask.

Chairman ISSA. Thank you. The earlier panel talked about a particular new regulation in EPA, a Boiler MACT, M-A-C-T. How often do you, in your analysis, see regulations where they create a regulation, then have to go to the court to try to delay it because in fact it can't be implemented like that one, where I guess in 3 days it is going to become law without there actually being technology to make it work, and they have admitted that in their own statements? Is that something that you see in other areas?

Mr. GATTUSO. I can't think of a case where that has happened before. I am sure it has, but I think it would be extremely rare for an agency to reverse itself that significantly.

Chairman ISSA. But they haven't reversed themselves; they have just gone to the court for relief from their own rule.

Mr. GATTUSO. That is true, although they reversed themselves in the sense that they apparently did think the rule was justified and now they are having second thoughts.

Chairman ISSA. Well, I am going to ask a specific question to Mr Shapiro. You are on record as saying, about cost-benefit analysis, "it is neither sound in theory nor useful in practice."

Now, when the President wants a cost-benefit analysis, does that mean that you disagree with President Obama when he is looking for regulatory relief that looks at cost-benefit, or is it in your testimony today basically that you want to figure out when something is a law, if it has a benefit, then you should do a cost-benefit, but if you are going to make it, you shouldn't consider it? I am a little confused because it appears as though basically you are very happy not having cost-benefit when they put the regulation on, and then when industry says it is costing us billions or millions, etc., that, as you said, they "exaggerate," that basically they have to prove that it is killing them or you don't want the regulation removed. Did I understand that correctly, Mr. Shapiro?

Mr. SHAPIRO. I am not quite sure of your understanding, but perhaps——

Chairman ISSA. But you have said cost-benefit analysis in that quote——

Mr. SHAPIRO. Of course.

Chairman ISSA [continuing]. Is not a useful practice, and yet the President thinks it is; Democrats here on the dais thought it should be.

Ms. Kerrigan, should we in fact have a cost-benefit analysis——

Mr. SHAPIRO. Excuse me, Mr. Chairman, may I answer the question?

Chairman ISSA. Well, you didn't seem to be interested in answering it, but I will come back to you.

Ms. Kerrigan, should we in fact, as a body, make sure that there is a cost-benefit analysis done by government, open to scrutiny before regulation occurs, as Mr. Ellig had suggested?

Ms. KERRIGAN. Oh, absolutely. And I think that is particularly important for small businesses, because there is a disproportionate impact on small businesses and I think that rigorous analysis needs to be done. So it is vitally important and it would of tremendous value to small businesses and the business communities if the agencies were required to do that.

Chairman ISSA. Thank you.

My time has expired, but I don't want to short-change Mr. Shapiro. Would you answer whether you still stand behind your 2009 White Paper, January, in which you said the problem with, so on and so on, cost-benefit analysis is neither sound in theory nor useful in practice? Do you still stand behind that?

Mr. SHAPIRO. I do. What we were talking about——

Chairman ISSA. Thank you.

I now recognize the ranking member.

Mr. CUMMINGS. In courtesy to you, and I apologize for the chairman, I would like to hear your answer to his question.

Mr. SHAPIRO. Thank you. If you look at al the major laws that involve the protection of people and the environment, with only two exceptions that I know about, Congress does not require that a regulation pass a cost-benefit test in order to implement the regulation. There is very good reason for that: in all of these laws Congress wanted to be protective; it wanted to protect the American people and the environment to the extent that was practicable and reasonable, and it has therefore set the laws in having this aspirational goal.

Now, that doesn't mean we shouldn't be interested in cost-benefit analysis, because we should analyze the efficiency costs of this aspirational goal, and that is what we do in cost-benefit analysis. Unfortunately, it is difficult to apply cost-benefit analysis because many, many of the benefits are difficult to monetize.

So while you have heard proposals here today that we should have additional analysis, we should study these things more, I don't object to that except for the caveat that we recognize going in of the great difficulty of monetizing the value of the benefits. What is a life worth? What is a fish worth? We can talk about it, but there are really severe limitations in using the methodology.

Mr. CUMMINGS. Let me ask you this. It is interesting. These regulations have been put forth by both Republican and Democratic administrations, and as a former small business person, I sympathize, I really do, with small business, and any business that has to go through some of these things. But as I listen to what you just said, is it your theory, I want to make sure I am saying this right, when the government puts forth these regulations, are you saying that they are more concerned about the general protection of the public? Is that what you are trying to say?

Mr. SHAPIRO. Yes, that is correct. Many, although not all, of these regulations basically work as technology-based regulations. So what Congress has said to the agencies is we want to do the best we can to protect the American public taking costs into account, so what we would like you to do is go out and find the best available technology which would not cause severe financial dislocation for an industry, and we want you to require them to use the best available technology to protect the public. That is essentially how many of these laws work.

Mr. CUMMINGS. All right, let me ask you this. A little bit earlier I described how some of the major corporations we heard from had skyrocketing profits over the last 2 years. For example, Chevron's profits soared from $10½ billion in 2009 to $19 billion in 2010, and ConocoPhillips' profits went from $4.4 billion to $11.4 billion, more than doubling in a year. But when we looked at the responses, a lot of these companies wanted to repeal corporate transparency provisions in the Wall Street reform bill, and these seem to have nothing to do with job creation. Let me ask you about one example.

The first regulation identified by ConocoPhillips was a requirement that all companies and other resource extraction issuers disclose their payments to foreign governments to access oil, gas, and minerals. Senator Richard Lugar, a well respected Republican, good friend, was one of the primary proponents of this provision

and he said, the essential issue at stake is a citizen's right to hold its government to account. We cannot force foreign governments to treat their citizens as we hope, but this amendment would make it much more difficult to hide the truth.

So my first question is why would ConocoPhillips want to keep their payments to foreign governments secret? And as I understand the point of today's hearing, we are trying to identify regulations that impair job creation, so here is my second question. If we agree with ConocoPhillips and repeal this provision, would that create any jobs in America? Mr. Shapiro?

Mr. SHAPIRO. I think this shows the reason why we need to broaden our focus beyond regulatory costs. This is a regulatory cost to those companies, so besides whatever embarrassment might come out of revealing this information, there are paperwork and other costs to the company. And there could be a debate over whether that is necessary, as you have heard before, but in order to evaluate whether that is necessary, we have to look at the broader picture of the benefits as well as the costs, benefits which are monetized or not.

Mr. CUMMINGS. Thank you.

Chairman ISSA. In order to be fair, I am going to try and do a little quick second round.

I am from the private sector, so maybe I see things differently. Mr. Shapiro, I took your yes, you still stand by it for an answer, so I was glad that the ranking member allowed you to elaborate.

Mr. SHAPIRO. Of course.

Chairman ISSA. But let me understand this. You think it is a good idea for a U.S.-flagged business to disclose what it pays, remembering we are one of the few countries in the world that does not allow, if you will, bribes. We make it a crime to pay a commission to somebody to get a deal. But the details of a contract, let's say in Kazakhstan or, you know, you name the country, if the details have to be made public by a U.S.-flagged company while BP, which is not U.S.-flagged, or a Russian company doesn't, then, if I understand, you think it is just fine for that legal but private transaction to be made available to their competitors while the other isn't, meaning they always know what price they have to beat from us, while in fact we don't know what price they are paying. And, meantime, the French, the Russians, and all the others, on top of we don't know what they are paying, are able to pay bribes with impunity. You really think that naively on global business, is that correct?

Mr. SHAPIRO. Mr. Chairman, I was trying to make a broader point. My area of academic specialty——

Chairman ISSA. OK, so in this particular case you are not speaking to those kinds of issues, you are thinking more broadly of regulatory compliance, is that right?

Mr. SHAPIRO. I think we need to have the conversation that the chairman indicated he would like to have, and that is looking at both benefits and costs.

Chairman ISSA. OK. Because I am very concerned that the ranking member has repeatedly, throughout this hearing, talked about Chevron and Conoco and other companies. I guess what he misses is the vast majority of these large increases occurred in their out-

side-the-U.S. operations. They are growing very fast on profits made by buying overseas and selling overseas, and then those look like profits in the United States, while in fact in the first panel, and I think we are hearing it broadly in the second panel, we realize that American jobs are not being created through American mining, manufacture, and agriculture, and we are here today, and I would like to have everyone make a closing statement as to this, we are here because it appears as though part of the impediment to U.S. job creations—not U.S. profits by doing business globally and making in China and selling to Europe, but U.S. jobs, those kinds of jobs we all grew up being proud of, working at the auto, steel, and rubber plants, working at the stamping operation, those are jobs are the jobs we think may be disappearing.

Go down the panel. And this is a fairly simple question, although you can elaborate. Do you believe there is any credence to looking for at least one impediment to U.S. job creation here? Is that frivolous or in fact are we on the right track to try to get those mining, agriculture, and manufacturing jobs back in America?

Mr. GATTUSO. I think you are definitely on the right track. There are costs. Now, that does not mean that every regulation is bad. That does not mean that no regulations are needed. But there are many that are bad; there are many that are necessary and many that are harmful. It is not an easy task to identify those, but that is what makes the project more important. Frankly, it is the easiest thing in the world for an agency to come up with a new regulation, to get it through, and certainly all the incentives for an agency head or agency staffer are to expand their jurisdiction.

Chairman ISSA. Thank you.

Mr. GATTUSO. We need to be vigilant to make sure that bias is overcome.

Chairman ISSA. Thank you.

Mr. Shapiro, to that question.

Mr. SHAPIRO. This is an important aspect of congressional oversight, and I think everyone appreciates that you are doing it, but we also need to look at the evidence. Stephen Meyer of MIT has done two studies; he compared economic performance in States with strict environmental regulation and economic performance in States with lesser environmental regulation, and he found that States with stronger environmental regulation had little difference in economic performance from those States with weaker standards. There was an intervening recession, so he went back and did it again to see whether the recession made a difference, and he concluded the results were the same; stronger environmental standards have not limited the relative pace of economic growth and development among the States over the past 20 years.

Chairman ISSA. Thank you.

Ms. Kerrigan.

Ms. KERRIGAN. I think we are definitely on the right track. I do think we need to be looking at this. Labor and capital is highly mobile in our global economy. I have traveled around the world, working with governments and business leaders and business associations in developing and emerging countries who are looking at what they can do to make their economies more competitive, what they can do to attract investment to help their small business sec-

tor. So there are other countries out there that know that they need to work on their internal processes in order to attract investment and it is very competitive and, quite frankly, they do want to eat our lunch. So I think it is important that we do, yes, absolutely.

Chairman ISSA. Thank you.

Mr. Ellig.

Mr. ELLIG. Two points On the cost side, regulatory uncertainty, there is evidence that uncertainty does deter business investment, which may deter job creation. My colleague, Dr. Richard Williams, 27-year veteran of the Food and Drug Administration, made that point in his submission in response to your request.

Second, the broader point is regulation reallocates resources. We get more of some things as a result of regulation; we get less of other things. The less of other things is the cost side. That may show up as lower employment than we would otherwise have; that may show up as lower wages; that may show up as higher prices for consumers; or it may show up as less investment if we regard regulation as something that just comes out of profit. That is the cost of saying, well, we will take it out of profit; we have less incentives for investment. Typically, those effects will be different for different industries and for different types of regulation, which is why it is so hard to generalize.

Chairman ISSA. I thank the gentleman.

And I note the attendance of the gentlelady from New York. I apologize for not catching you earlier, Ms. Buerkle, for 5 minutes.

Ms. BUERKLE. Thank you, Mr. Chairman. Since the beginning of the formation of this committee and my membership on it, our chairman has charged us to go out and begin a conversation with all entities, businesses, small businesses, large businesses, and our constituents to talk with them and listen to their concerns regarding regulations and how these regulations impede their success and how those regulations really snuff out the entrepreneurial spirit that has made this country the great Nation that she is. So I am delighted to be here today and have the opportunity to greet all of you today, and I thank you for being here.

My first question is a general question, and I will start with Mr. Gattuso, but then if anyone else would like to comment, I would certainly welcome that. At his State of the Union address, we heard the President speak about regulations and the need to get regulations under control so that we do not impede jobs and getting this economy back on track. I would like to hear from you whether or not you think that is a serious initiative that is going to be taken or what your thoughts are about that.

Mr. GATTUSO. I would like to think that it is a serious initiative and I would welcome a serious initiative along those lines. I have considerable concerns, however, from what actually has been done so far. The Executive order released by the President, issued by the President only calls for preliminary plans for a review of regulation sometime in the future, it is not the governmentwide review that he has stated it was; it does not apply to independent agencies, who are some of the largest producers of regulations; and it seems each time he talks about this initiative there is less and less on why we need to review regulations and more on defending regula-

tions. So the tenor of the initiative seems to be perhaps fading already, which is a matter of great concern.

Just to cap it off, I was very disappointed in his speech to the U.S. Chamber, where he seemed to rely upon cajoling business to hire, to claim moral imperatives, appeals to patriotism, basically job owning, as opposed to real policy change. He even went so far in actually a humorous note and said he wish he had brought a fruit cake over to the Chamber of Commerce when he moved into the neighborhood to welcome them and establish a friendship. And that is good, we should have good relations between different factions in politics, but fruit cakes won't do it. We need more than fruit cake economics to get this problem solved.

Ms. BUERKLE. Thank you. Would any other members like to answer? Yes, sir.

Mr. SHAPIRO. Thank you for this opportunity to answer your question. I think the President is seriously interested in this, but he also feels the responsibility to do it in a balanced way; that these regulations and these laws are important because they also protect people and they protect the environment. And at least regarding some of the aspects of that, we also need to move ahead. Agencies have limited resources, and to the extent they are pulled off on look-backs, of course, that also limits their ability to go forward.

Finally, I think the President knows, to the extent we have done these look-backs in the past, we have generally found that costs are less than projected at the time and benefits are about the same as we thought. There have been very few look-backs that have found that we are chasing after problems that are really not serious societal problems.

Ms. BUERKLE. Just if I could comment on your response. I think that everyone on the committee is very concerned and interested in always maintaining the balance between public safety and safety in the job place, or whatever the issue is, but also the need to get this economy back on track and create jobs, so thank you.

Ms. KERRIGAN. I think time will tell. We are hopeful and we will take part in the initiative with the White House. The key, though, is that the initiative, the spirit of the initiative, also going to be implemented with the existing regulations that are moving through the system right now. With the new health care, the financial service overhaul laws, some of the things that are moving through the Department of Labor right now; not only just to look back, but are we in fact looking at the costs on small business and what we can do to—if they are going to move forward with these regulations, are they taking small businesses into account; you know, will they be exempted, is there going to be an alternative that perhaps makes it easier and less burdensome for them to comply?

But with these initiatives it is a lot of time, energy, and passion that is going to be needed from the White House and, again, time will tell. We will see.

Ms. BUERKLE. Thank you. I believe we are out of time, unless I can——

Mr. MCHENRY [presiding]. I appreciate. The gentlelady's time has expired.

Ms. BUERKLE. Thank you.

Mr. MCHENRY. With that, I recognize the ranking member of the committee, Mr. Cummings, of Maryland.

Mr. CUMMINGS. Thank you very much.

I want to thank the witnesses for excellent testimony. As I was sitting here, I could not help but think about 40 years ago, when I sat as an employee of Bethlehem Steel in Baltimore, and it was interesting back then that we spent a whole day just on safety regulations before we could do anything. But there was something that makes me feel very emotional as I am sitting here, and I did not realize the significance of it then, but I understand it now.

At the end of the day, if you blew your nose, matter of fact, if you were on the premises for an hour and you blew your nose, black stuff would come out. Not trying to ruin your lunch, but that meant that we were inhaling. We were making a decent salary, Mr. Shapiro and Ms. Kerrigan. We had a summer job, which we really needed, one of the highest paying jobs that we could get, really, as a student, after my eleventh grade and twelfth grade year.

But we were also inhaling stuff that would kill us. And it was even more evident and I have evidence of that because a lot of the gentlemen that I worked with, who were making a lot of money, died early. They are dead. They are no longer there for their children; didn't even get a chance to see many of their grandchildren. They are dead. And I think that what we have to constantly keep in mind is this whole balancing act.

Mr. Shapiro, I think you said something that I haven't heard any other witness talk about, and that is it sounds like you were saying that when these regulations are made, the government bends on the side of protecting human life, bends toward human safety and the welfare of people. I think that is what you are saying. And this keeps going on in my mind when I think of Bethlehem Steel and I think about those people who are dead and I think about the ones who called me when I was in college to tell me that they were suffering from cancer and all kinds of problems because of what they inhaled. So I think that later on, when things came around and OSHA began to look at some of that, I think they began to require certain other things like a mask, like a simple mask over one's face.

So regulations do have a significant role to play with regard to life and death situations, so I just want us to always keep that in mind. Some people want to try to make it look as if it is one side or the other. I think it is a balancing act. It really is. No one wants to overburden business, but it is one thing to have a job; it is another thing to be able to go home at the end of the day and not be shipped off in a coffin. That is real. So I think we have to maintain that.

Now, let me go back to something else. We were talking about Conoco, and I want to make it clear, Mr. Shapiro, that Senator Lugar is no wacko. He is a brilliant man who I admire tremendously; well respected Republican. He said, when he was talking about this provision, he said the essential issue at stake is a citizen's right to hold his government to account. We cannot force foreign governments to treat their citizens as we would hope, but this amendment would make it much more difficult to hide the truth.

You can comment on that in a minute, but I need to get one thing in, Mr. Chairman, before I do that. I want to get some letters in real quick. I ask unanimous consent to enter into the record three additional letters we received for this hearing. These letters are from Robert and Susan Serigliano, who lost their son Bobby when he was suffocated by a drop-side crib; another letter from the majority of Small Business Advocacy Organization that supports the Patient Protection and Affordable Care Act; and, finally, the Main Street Alliance, an organization that represents small businesses and supports the Patient Protection and Affordable Care Act. I ask that they be part of the record, Mr. Chairman.

Mr. MCHENRY. Without objection.

[The information referred to follows:]

We are Robert and Susan Cirigliano also known as Daddy and Mommy. But we have only heard three of our four children call us that because our son Bobby never had the chance. On September 15, 2004 Bobby was six months and three days old when his head and neck were caught in the detached side rail of his crib. After the drop side rail detached Bobby's head was caught between the side rail and the mattress. With his face pressed against the mattress, he suffocated. Bobby was taken from his crib, put into an ambulance, arrived at the hospital and never came home.

We miss Bobby everyday but what is most important is what Bobby misses. Bobby has an older sister who never had the chance to teach him how to get in and out of trouble. Bobby has a younger brother and sister that he has never met. Bobby has two grandfathers that he never played catch with. Two grandmothers who's cookies he was never able to taste. Bobby never had a chance to wear his first Halloween costume. He didn't get to sit on Santa's lap and never blew out a birthday candle.

Our smiles have dulled and our family will never be complete again. Other than Mommy and Daddy's arms Bobby was in one of the safest places - his crib. The reality is his crib was not safe and our lives will never be the same. We refuse to allow any other family suffer the pain we have.

After four years, one month, six days and two more "reported" infant deaths Bobby's crib was recalled. It took FOUR YEARS, ONE MONTH, SIX DAYS and TWO MORE "REPORTED" INFANT DEATHS for our sons crib to be recalled!

Our family has witnessed, first hand, manufacturer inaccuracies and bogus reports relayed to consumers. Our son, Bobby, was "negotiated" out of the recall announcement for his crib. We have learned that sometimes negotiation is necessary to speed up the recall. The consumer is being advised that there is a problem while at the same time manufacturers are minimizing the severity. It is sickening and heartbreaking to know that there were infants dying before our son, and infants dying after our son, before manufacturers felt it was necessary to warn parents. The manufacturer can not be trusted with alerting the public to deadly defects in a timely manner.

If this database saves even one child it's worth it a million times over. Just the thought that our trusted representatives would not even try to give this database a chance to see if it is saving lives is gut wrenching. How could getting rid of the database be effective in pin pointing defective products?

We had no reason not to purchase this crib. But other parents did. We had no idea the crib we were using for our son was a danger. But other parents did. We did not know our son was at risk of dying. But other parents did. They had no way of letting us know. The manufacturer did. They just didn't.

This is exactly why we support CPSC's public database.

Cummings VC

SMALL BUSINESS MAJORITY

STATEMENT FOR THE RECORD

BEFORE HOUSE COMMITTEE ON OVERSIGHT & GOVERNMENT REFORM

ON

HEARING ON REGULATORY IMPEDIMENTS TO JOB CREATION

FEBRUARY 10, 2011

JOHN ARENSMEYER
FOUNDER & CEO
SMALL BUSINESS MAJORITY

This testimony is submitted in support of the small business perspective on the Patient Protection and Affordable Care Act and its impact on America's 28 million small businesses and the economy as a whole.

Small Business Majority is a nonprofit, nonpartisan small business advocacy organization founded and run by small business owners and focused on solving the biggest problems facing small businesses today. We represent the 28 million Americans who are self-employed or own businesses of up to 100 employees. Our organization uses scientific opinion and economic research to understand and represent the interests of small businesses.

We are testifying in support of the Affordable Care Act, which will help reduce the cost of insurance and medical care while making coverage affordable, fair and accessible. Our research shows that reforming our broken healthcare system has been and still is one of small business owners' top concerns, and that the majority of small employers believe reform is needed to fix the U.S. economy. It also shows that small businesses support key provisions in the law, specifically ones that help them better afford insurance, such as tax credits and insurance exchanges, and those that contain costs. Controlling skyrocketing costs is essential to ensuring small businesses' ability to obtain high-quality, affordable healthcare for themselves, their families and their employees. Our research also shows that absent reform, these costs would continue to escalate, undermining small businesses' success and our economic recovery. The new law goes a long way toward fixing our broken system and stemming these spiraling costs, while helping to create jobs and stimulate the economy.

Our research, which is discussed in more detail below, shows the impact this legislation will have on small businesses and reveals that small businesses support many provisions in the law, especially those that benefit them immediately, such as the small business tax credits. In July 2010, Small Business Majority partnered with Families USA to determine the number of small businesses eligible for a tax credit on their 2010 tax returns, one of the key provisions of the Affordable Care Act.

- We found that more than 4 million small businesses would be eligible to receive a tax credit for the purchase of employee health insurance in 2010. [1]

We also recently commissioned a national survey of 619 small business owners to determine their views on the tax credits and insurance exchanges, another crucial provision of the Affordable Care Act for small businesses. The survey, which was released on Jan. 4, 2011, found that:

- Both the tax credits and the exchanges, once they take effect, make small business owners more likely to provide healthcare coverage to their employees;
- One-third of employers who don't offer insurance said they would be more likely to do so because of both the small business tax credits and the insurance exchanges;
- 31% of respondents who currently offer insurance said the tax credits and the exchanges will make them more likely to continue providing coverage. [2]

However, the poll also found that the vast majority of small business owners don't know the tax credits or exchanges exist to help them afford coverage.

As Congress considers measures to repeal the Affordable Care Act, it's important to understand the consequences this would have on small businesses and our fragile economy.

- Repealing the law would mean small businesses would lose $4 billion per year in healthcare tax credits and many small business protections, including a ban on denying coverage for preexisting conditions. This provision will provide much-needed help to many Americans, including the legions of self-employed individuals—many who currently can't get coverage because of this reason;
- Repeal would rob small businesses of their ability to pool their buying power through state insurance exchanges, and the various cost controls the ACA puts in place would also be lost;
- Repeal would mean an end to the tough enforcement measures in the law, which are saving billions in Medicare waste, fraud and abuse. This would result in higher taxes for employers and employees to fund Medicare, and higher taxes mean fewer jobs.

These are just some of the disastrous consequences repeal of the Affordable Care Act would have on small businesses—consequences that are too severe on our nation's primary job creators. Small businesses create 70% of new jobs in our country. Spending less on health insurance will help them generate larger profits, which will help speed our journey down the road to economic recovery.

My testimony highlights the issues of greatest importance to small businesses in the Affordable Care Act. It explains what we have learned from our scientific research about

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[1] Families USA and Small Business Majority, A Helping Hand for Small Businesses: Health Insurance Tax Credits, July, 2010, http://smallbusinessmajority.org/small-business-research/tax-credit-study.php.
[2] Small Business Majority, Opinion Survey: Small Business Owners' Views on Key Provisions of the Patient Protection and Affordable Care Act, Jan. 4, 2011, http://smallbusinessmajority.org/small-business-research/small-business-healthcare-survey.php.

both the opinions of small employers and the economic impact of reform on small businesses, including the consequences repealing the Act would have on them and the economy overall. The key issues are:

- Why healthcare costs are killing small businesses and sapping our economic vitality;
- How the ACA is already helping small businesses afford insurance and provide their employees with coverage;
- Small businesses' No. 1 priority: Controlling the skyrocketing cost of health insurance and how the ACA tackles this problem;
- What the price of repeal is for small businesses and the economy;
- Why sharing the responsibility will strengthen our small businesses, their employees and the economy.

Healthcare Costs are Killing Small Business and Sapping Our Economic Vitality

National surveys of small business owners consistently show that the cost of health insurance is their biggest overall problem. In fact, the crushing costs of healthcare outranked fuel and energy costs and the weak economy for 78% of small business people polled by the Robert Wood Johnson Foundation in 2008.[3]

Small businesses are at a disadvantage in the marketplace largely because our small numbers make rates higher. According to research supported by the Commonwealth Fund, on average we pay 18% more than big businesses for coverage.[4] Small businesses, including the self-employed, need a level playing field to succeed and continue as the job generators for the U.S. economy.

We hear stories every day from small business owners who can't get coverage because they've been sick in the past or the health plans they are offered are outrageously priced. Louise Hardaway, a would-be entrepreneur in the pharmaceutical products industry in Nashville, had to give up on starting her own business after just a few months because she couldn't get decent coverage—one company quoted her a $13,000 monthly premium.

Many other businesses maintain coverage for employees, but the cost is taking a bigger and bigger chunk out of their operating budgets. It's common to hear about double-digit premium increases each year, eating into profits and sometimes forcing staff reductions. Small business owner Walt Rowen, owner of Susquehanna Glass Co. in Columbia, PA, was quoted a 160% premium increase from his carrier last year, forcing him to find a new plan. These rising bills frequently force business owners to hack away at the insurance benefit to the point where it's little more than catastrophic coverage. That leaves employees with huge out-of-pocket expenses or a share of the premium they can't afford, forcing them to drop coverage. That concerns Larry Pierson, owner of a mail-order bakery in Santa Cruz, California, who says "the tremendous downside to being

[3] Robert Wood Johnson Foundation, Study shows small business owners support health reform, 2008, http://www.rwjf.org/coverage/product.jsp?id=36558.
[4] J Gabel et al, Generosity and Adjusted Premiums in Job-Based Insurance: Hawaii is Up, Wyoming is Down, *Health Affairs*, May/June 2006, http://content.healthaffairs.org/content/25/3/832.full.

uninsured can be instant poverty and bankruptcy, and that's not something my employees deserve."

Small business owners want to offer health coverage, and our surveys show that most of them feel they have a responsibility to do so. Small Business Majority conducted surveys of small business owners in 17 states between December 2008 and August 2009.[5] Our key findings included:

- An average of 67% of respondents said reforming healthcare was urgently needed to fix the U.S. economy;
- An average of 86% of small business owners who don't offer health coverage to their employees said they can't afford to provide it, and an average of 72% of those who do offer it said they are struggling to afford it.

It should be noted that respondents to these surveys included an average of 15% more Republicans (39%) than Democrats (24%), while 27% identified as independent.

The exorbitant cost of insurance means that many small businesses are forced to drop coverage altogether. According to the Kaiser Family Foundation, 54% of businesses with fewer than 10 employees don't offer insurance.[6]

This makes small business employees a significant portion of the uninsured population. Of the 45 million Americans without health insurance in 2007, nearly 23 million were small business owners, employees or their dependents, according to Employee Benefit Research Institute estimates.[7] And nearly one-third of the uninsured—13 million people—are employees of firms with less than 100 workers.[8]

With staffs of 5, 10 or even 20 people, small businesses are tight-knit organizations. Owners know their employees well and depend on each employee for their businesses' success. They don't want to see their valuable employees wiped out financially by a health problem, or ignore illnesses because they can't afford to go to the doctor.

The Affordable Care Act addresses all these issues and more. Without reform, we will impede our overall economic growth. Small businesses with fewer than 100 employees employ 42% of American workers.[9] Traditionally, small businesses lead the way out of recessions. Continuing to address the healthcare crisis by implementing the Affordable Care Act is essential to our vitality as a nation. A repeal of this landmark legislation would send our primary job creators back into in a broken system that threatens their competitiveness, discourages entrepreneurism and jeopardizes our economic recovery.

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[5] Small Business Majority, State Surveys Highlight Small Business Support for Healthcare Reform, August 2009, http://www.smallbusinessmajority.org/small-business-research/opinion-research.php.
[6] Kaiser Family Foundation/HRET, Employer Health Benefits Annual Survey, 2008, http://ehbs.kff.org/2008.html.
[7] Employee Benefit Research Institute, Sources of Health Insurance and Characteristics of the Uninsured: Analysis of the March 2008 Current Population, http://www.ebri.org/publications/ib/index.cfm?fa=ibDisp&content_id=3975.
[8] Center for American Progress, What Will Happen to Small Business if Health Care Is Repealed, July 23, 2010, http://www.americanprogress.org/issues/2010/07/small_biz_reform.html.
[9] U.S. Bureau of Census, 2006 County Business Patterns

The Affordable Care Act Is Already Helping Small Businesses Afford Insurance and Provide Their Employees with Coverage

Our research shows that small business owners are more likely to provide insurance to their employees because of the tax credits and exchanges provided through the new healthcare law. As I mentioned in my introduction, our most recent research includes a national survey of 619 small business owners that was conducted from November 17-22, 2010.[10] We wanted to gauge how entrepreneurs view two critical components of the Affordable Care Act: the small business tax credits—a provision allowing businesses with fewer than 25 employees that have average annual wages under $50,000 to get a tax credit of up to 35% of their health insurance costs beginning in tax year 2010—and health insurance exchanges—online marketplaces where small businesses and individuals can band together to purchase insurance starting in 2014. The survey's key findings include:

- One-third (33%) of employers who don't offer health insurance said they would be more likely to do so because of the small business tax credits;
- 31% of respondents—including 40% of businesses with 3-9 employees—who currently offer insurance said the tax credits will make them more likely to continue providing insurance;
- One-third (33%) of respondents who currently do not offer insurance said the exchange would make them more likely to do so;
- The same is true for those who already offer insurance, with 31% responding that the exchange would make them more likely to do so;
- However, most respondents are not familiar with the exchange or the tax credits; only 31% of respondents are familiar with the exchange and 43% are familiar with the tax credits.

We believe that once the public, and small business owners in particular, become more familiar with the new law, they will understand the financial benefits and cost savings it provides. In fact, a Kaiser Family Foundation study conducted in January 2010 found that although the public was divided overall about reform, they became more supportive when told about key provisions. After hearing that tax credits would be available to help small businesses provide coverage to employees, 73% said it made them more supportive, and 63% felt that way after learning that people could no longer be denied coverage because of preexisting conditions.[11]

The huge number of small businesses eligible for a credit on their 2010 tax returns shows how wide-ranging the benefits of the ACA are: Small Business Majority and Families USA's study on the number of small businesses eligible for a tax credit on their 2010 tax returns shows that more than 4 million small businesses are eligible.[12] That equates to

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[10] Small Business Majority, Opinion Survey: Small Business Owners' Views on Key Provisions of the Patient Protection and Affordable Care Act, Jan. 4, 2011, http://smallbusinessmajority.org/small-business-research/small-business-healthcare-survey.php..

[11] Kaiser Family Foundation, Americans Are Divided About Health Reform Proposals Overall, But the Public, Including Critics, Becomes More Supportive When Told About Key Provisions, Jan. 22, 2010, http://www.kff.org/kaiserpolls/kaiserpolls012210nr.cfm.

[12] Families USA and Small Business Majority, A Helping Hand for Small Businesses: Health Insurance Tax Credits, July, 2010, http://smallbusinessmajority.org/small-business-research/tax-credit-study.php.

83.7% of all small businesses in the country. Perhaps even more encouraging is that more than 90% of small businesses in 11 states are eligible to receive the tax credits, with nearly 1.2 million small businesses nationally eligible to receive the maximum credit.

A recent RAND Health study also examined the impact of the Affordable Care Act on health insurance coverage for workers at small companies. It found that once the new law takes full effect, the percentage of employers that offer insurance will increase from 57% to 80% for firms with fewer than 50 employees, and from 90% to 98% for firms with 51 to 100 employees.[13] Additionally, a study released Jan. 24, 2011 by the Urban Institute (funded by the Robert Wood Johnson Foundation) also shows the positive benefits of the ACA on America's employers. The study debunks claims that the ACA would erode employer-sponsored coverage by providing incentives for employers to stop offering coverage, or that businesses would face increased costs as a result of reform. To the contrary, the study found that overall employer-sponsored coverage under the ACA would not differ significantly from what coverage would be without reform, but that in fact employer-sponsored insurance premiums will fall noticeably, by nearly 8%, and total spending on healthcare by small businesses will also decrease by nearly 9% because of healthcare exchanges and other provisions of the new law.[14]

Analysis after analysis shows that the new healthcare law holds significant promise toward empowering small businesses to provide their employees with health insurance, and to be able to do so without breaking the bank. Instead of repealing the small business health care tax credit, Congress should be examining how to expand it in order to provide more support to small business.

Small Businesses' No. 1 Priority: Controlling the Skyrocketing Cost of Health Insurance, and How the Affordable Care Act Tackles this Problem

Small business owners are deeply concerned about the exponentially rising cost of health insurance. As Harvard University economics professor David M. Cutler notes, while family health insurance premiums have increased 80% in the past decade after adjusting for inflation, median income has fallen by 5%.[15] When people have less disposable income to spend at local small businesses, small business owners feel the squeeze.

We know from our opinion surveys that small business owners want reform to lower these skyrocketing costs and believe it will be good for the economy overall.[16] The Affordable Care Act includes many provisions to contain costs. These measures will be felt throughout the entire healthcare system, lowering premium costs to small business owners and consumers alike. The Congressional Budget Office estimates the new law will lower federal deficits by more than $143 billion over the next 10 years, and by more than $1 trillion in the following decade. While there is still more that can be done to contain

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[13] RAND Corporation, "How Will the Affordable Care Act Affect Employee Health Coverage at Small Businesses?" 2010, http://www.rand.org/pubs/research_briefs/RB9557/index1.html.
[14] Urban Institute, "Employer-Sponsored Insurance Under Health Reform: Reports of Its Demise Are Premature," Jan. 24, 2010, http://www.rwjf.org/coverage/product.jsp?id=71749&cid=XEM_749842.
[15] D Cutler, Repealing Health Care Is a Job Killer, Center for American Progress, 2010, http://www.americanprogress.org/issues/2011/01/jobs_health_repeal.html.
[16] Small Business Majority, State Surveys Highlight Small Business Support for Healthcare Reform, 2009, http://smallbusinessmajority.org/small-business-research/opinion-research.php.

costs within the system, the new law is a great start. It moves our healthcare system toward greater financial stability and provides improved access to affordable, quality care for small business owners and their employees.

Along with small business tax credits and insurance exchanges, the ACA controls costs by reining in administrative costs for small businesses. As previously noted, small businesses pay 18% more on average than large businesses for comparable health policies. This is largely due to high administrative costs, which can be up to 30% of premiums. The law includes administrative simplification programs, helping to put the country on a path to lower-cost, standardized administrative transactions, processes and forms. Additionally, it establishes insurer efficiency standards that require 80% of premium dollars be spent on care, not administrative overhead and executive compensation, for small group and individual plans. For large groups plans, the standard will be 85%. All of these measures will lower the time doctors have to spend on paperwork.

The ACA also includes numerous reforms in Medicare that will reward value of care, not the volume of care. It requires the Department of Health and Human Services (HHS) to adopt value-based purchasing and payment methods for Medicare reimbursements for both physicians and hospitals, and move away from the fee-for-service system that is so costly and inefficient. What's more, cost containment measures made to Medicare will have a ripple effect to other areas of the system, further reducing costs. Harvard professor David Cutler points out the steps the Affordable Care Act takes to cut these costs:

- Payment innovations including greater reimbursement for preventive care services and patient-centered primary care; bundled payments for hospital, physician, and other services provided for a single episode of care; shared savings approaches or capitation payments that reward accountable provider groups that assume responsibility for the continuum of a patient's care; and pay-for-performance incentives for Medicare providers;
- An Independent Payment Advisory Board with the authority to make recommendations that reduce cost growth and improve quality in both the Medicare program and the health system as a whole;
- A new Innovation Center within the Centers for Medicare and Medicaid Services, or CMS, charged with streamlining the testing of demonstration and pilot projects in Medicare and rapidly expanding successful models across the program;
- Profiling medical care providers on the basis of cost and quality and making that data available to consumers and insurance plans, and providing relatively low-quality, high-cost providers with financial incentives to improve their care;
- Increased funding for comparative effectiveness research;
- Increased emphasis on wellness and prevention.[17]

Rather than focusing on repeal, lawmakers should focus on improving healthcare reform, especially when it comes to cost containment. While the new law is a good start

[17] David Cutler, Repealing Health Care Is a Job Killer, Center For American Progress, Jan. 7, 2011, http://www.americanprogress.org/issues/2011/01/jobs_health_repeal.html.

toward fixing our system and strengthening our economy, we should be bolstering it even more by including additional cost containment provisions. This will bring health inflation down and help businesses create more jobs.

The Price of Repeal for Small Businesses and the Economy

The shock of repeal would reverberate throughout the U.S. economy. The nonpartisan Congressional Budget Office (CBO) projects repeal would add $230 billion over the next 10 years to the federal budget deficit, and more than $1 trillion in the decade to follow. The national debt is already at its limit, and expanding the deficit would only cause additional lack of confidence in our nation's ability to recover from the recession.

When you examine what repeal would mean financially for America's 28 million small businesses, the picture is even bleaker. In June 2009, Small Business Majority commissioned noted economist and Massachusetts Institute of Technology professor Jonathan Gruber to apply his healthcare economics microsimulation model to the small business sector. He focused on businesses with 100 or fewer employees.[18] Our research showed that without reform:

- Small businesses would pay nearly $2.4 trillion over the next 10 years in healthcare costs for their workers;
- A staggering 178,000 small business jobs, $834 billion in small business wages, and $52.1 in profits would be lost due to these healthcare costs;
- Nearly 1.6 million small business workers would continue to suffer from "job lock," where they are locked in their jobs because they can't find a job with comparable benefits. This represents nearly one in 16 people currently insured by their employers.

In a recent article he wrote for the Center for American Progress, Gruber again addressed the issue of job lock.[19] He noted that "such a system significantly distorts our labor markets by forcing individuals to stay in jobs that offer health insurance rather than to move to newer and more productive positions where coverage is not available. Millions of U.S. workers are not moving to better jobs or starting new businesses because there is nowhere to turn for insurance coverage should they leave their jobs."

The Affordable Care Act remedies this problem and levels the playing field to support entrepreneurs willing to take a risk and start a new enterprise. Insurance reforms provided in the new law protect these entrepreneurs, and the insurance exchanges established by the law allow the self-employed and small businesses to pool together for lower premium rates.

The Center for American Progress has also weighed in on what small businesses would lose if the Affordable Care Act were repealed. The percentage of small businesses offering coverage has decreased from 68% in 2000 to 59% in 2007; repeal would ensure that this

[18] Small Business Majority, The Economic Impact of Healthcare Reform on Small Businesses, July 2009, http://www.smallbusinessmajority.org/small-business-research/economic-research.php.
[19] J Gruber, Be Careful What You Wish For, Repeal of the Affordable Care Act Would Be Harmful to Society and Costly for Our Country, *American Progress*, Jan 2010, http://www.americanprogress.org/issues/2011/01/aca_repeal.html.

downward spiral would continue. Since 40% of small employers spend more than 10% of their payroll on healthcare costs, repeal would cause those already providing insurance to do so at the expense of increased wages. This would result in less profits, business investment and job creation. Additionally, repeal would mean small businesses would continue to pay on average 18% more for health insurance than large firms. And they won't get the financial relief tax credits and insurance exchanges will provide.[20]

Healthcare reform will also reduce the "hidden tax" associated with health insurance. Repeal would keep this tax in place. The uninsured often delay treating their health problems until they become severe, and public and charity programs pick up a share. However, a portion remains unpaid. To cover the cost of this uncompensated care, health providers charge higher rates when the insured receive care, and these increases get shifted to consumers and small businesses in the form of higher premiums. This creates a "hidden health tax" that inflates the cost of premiums.[21]

Instead of helping us move forward, a repeal of the healthcare law would send us back to the status quo and ensure that small businesses will be unable to play their historical role as the country's primary job creators. In fact, Harvard professor David Cutler projects repeal would destroy 250,000 to 400,000 jobs annually over the next decade, increase medical spending by $125 billion by the end of this decade and add nearly $2,000 annually to family insurance premiums.[22] His summary of what repeal would do to the country is as dismal as it is succinct: "It would hurt family incomes, jobs, and economic growth."

Sharing the Responsibility: Strengthening Our Small Businesses, Their Employees and the Economy

The Affordable Care Act requires that all residents purchase insurance—a requirement that, while not uniformly popular, is necessary in order for reform to be successful. It will ensure a broad distribution of health risks in the market and help bring down costs. While this requirement has spawned contentious debates, we found that many small businesses are willing to help share the responsibility of providing insurance if it means lower costs overall and better quality insurance. Opinion polling we conducted shows that:

- Small businesses are willing to share the responsibility for making health insurance affordable along with insurers, healthcare providers, individuals and government, according to an average of 66% of respondents. By state, those agreeing with the concept of shared responsibility ranged from 59% to 72%.[23]

We've also found that because so many small businesses are bombarded with misinformation, it has made it increasingly difficult for them to determine what the law

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[20] Center for American Progress, What Will Happen to Small Business if Health Care is Repealed, 2010, http://www.americanprogress.org/issues/2010/07/small_biz_reform.html.

[21] Kathleen Stoll and Kim Bailey, Hidden Health Tax: Americans Pay a Premium (Washington: Families USA, May 2009).

[22] D Cutler, Repealing Health Care is a Job Killer, Center for American Progress, 2010. http://www.americanprogress.org/issues/2011/01/jobs_health_repeal.html

[23] Small Business Majority, State Surveys Highlight Small Business Support for Healthcare Reform, August 2009, http://smallbusinessmajority.org/small-business-research/opinion-research.php.

actually requires of them. Most small business owners are surprised to learn that they won't be required to provide insurance. Businesses with fewer than 50 employees, which accounts for 96% of small businesses,[24] are exempt from all requirements in the law. Businesses with 51 employees or more will be required to provide insurance, however 96.5% of these businesses already cover their workers.[25]

The provision that all Americans purchase insurance was included in the law because businesses and the American people made it clear that they wanted to continue an employer-based health insurance system, not a government healthcare system, such as Medicare for all or Canadian-style healthcare insurance. Because 96% of employers with 51 or more employees are providing health insurance as well as paying federal taxes, it would not be fair to let 4% of employers have a free ride at the expense of the 96% of employers currently offering insurance, and at the same time have their employees covered by taxpayer funds to provide health insurance. Additionally, without the free-rider provision large employers would have an incentive to stop providing health insurance and let taxpayers provide coverage for their employees.

Small businesses today offer health benefits to attract and retain good employees and to be competitive with large businesses. This will continue under reform, except that now these small businesses will have the benefit of buying health insurance through the state insurance exchange—creating market leverage like that of big companies, while driving down and stabilizing costs for their employees.

Conclusion

Healthcare reform is not an ideological issue; it's an economic one. Small business owners know this, which is why they overwhelmingly support reforming our broken system and containing the skyrocketing cost of insurance.

Without healthcare reform, small businesses will once again be mired in a system that drains their coffers and stunts their growth—disabling them from playing their vitally important role as the nation's jobs creators. Harvard professor David Cutler is right when he concludes that repeal is "bad economic policy. The effort to repeal health reform will make our current problems worse."[26] We hope Congress will spend its time focusing on ways to make implementation of the Affordable Care Act as smooth as possible, and instead of trying to dismantle it, fix the parts that need improvement. Our small businesses and our economic recovery depend on it.

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[24] U.S. Small Business Administration, Office of Advocacy, based on data provided by the U.S. Census Bureau, Statistics of U.S. Businesses, 2006.
[25] Medical Expenditures Panel Survey, Insurance Component, Table I.A.2, 2008, available online at http://www.meps.ahrq.gov/mepsweb/data_stats/summ_tables/insr/national/series_1/2008/tia2.pdf.
[26] D Cutler, Repealing Health Care is a Job Killer, Center for American Progress, 2010. http://www.americanprogress.org/issues/2011/01/jobs_health_repeal.html

the MAIN STREET alliance

Small business owners. Small business values.

February 9, 2011

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

The Honorable Elijah Cummings
Ranking Member
Committee on Oversight & Government Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Re: Hearing on "Regulatory Impediments to Job Creation" on February 10, 2011

Dear Chairman Issa and Ranking Member Cummings,

We appreciate this opportunity to provide input on behalf of the small business owners in the Main Street Alliance network for your February 10 hearing on "regulatory impediments to job creation."

The Main Street Alliance is a national network of small businesses dedicated to ensuring that small business owners have the opportunity to speak for ourselves on issues that impact our businesses, our employees, and our local economies. As small business owners (a caterer and a cabinet maker) ourselves, we have both had the privilege and opportunity to testify before committees of Congress, sharing our direct experiences and the views of other business owners in our network. We know the country counts on small businesses to be engines of job creation, and we appreciate your interest in small business perspectives on pressing public policy issues.

The focus of this hearing suggests that the barriers to job creation in the current economy are primarily regulatory. As small business owners, this has not been our experience. In fact, in our experience the two leading impediments to job creation – the decimation of our customer base brought on by the 2008 financial crisis and Great Recession, and the continuing escalation of runaway health insurance costs – stem not from too much regulation but from just the opposite: too little.

Small businesses need effective regulation to ensure a level playing field and to make sure markets work as they should: to promote competition that drives innovation, produces value for consumers, and supports job creation. The health care arena is a prime example of how the absence of effective oversight has harmed small businesses, and we will focus the balance of this letter on that topic.

As small business owners, we have been left at the whim and mercy of the health insurance companies for decades, with no mechanisms to control runaway rate increases or demand accountability and value for our premium dollars. The new health care law (the Patient Protection and Affordable Care Act, or ACA) is finally changing that: from the small business tax credits to new protections like rate review and a value for premiums requirement, the health law is already throwing a lifeline to small businesses, creating opportunities for businesses to offer health coverage, save money on premiums, and plow those savings back into business investment and job creation.

While some may raise concerns about the employer responsibility requirement for businesses with more than 50 workers, the fact remains that over 95 percent of our nation's businesses have less than 50 workers (and so would not be subject to this requirement), and 95 percent of businesses with more than 50 workers already offer health coverage. Indeed, this provision only reinforces what the vast majority of larger employers already do, and ensures that responsible employers who offer good-paying jobs with health benefits aren't undercut by competitors who shun these responsibilities.

A much bigger issue – indeed, a true threat to small businesses and our ability to create jobs – is runaway health insurance premiums that have run roughshod over small businesses in the absence of effective oversight mechanisms. For example, in early 2010 (before the health care law was passed), one of us received a letter from our insurer offering to renew our current coverage... at an eye-popping 124 percent increase. This is what an unregulated health insurance market, without any checks and balances or mechanism for insurer accountability, has to offer to small businesses, and it is simply not sustainable.

Thankfully, the health care law includes a series of provisions that will begin to rein in these increases and cut costs for small businesses like ours. These provisions include:

Small Employer Health Premium Tax Credits
Business owners in our network from Portland, Maine to Portland, Oregon are already benefiting from the new tax credits effective for tax year 2010. Jim Houser, owner of Hawthorne Auto Clinic in Portland, Oregon with 15 employees, expects to receive a credit of between $5,000 and $10,000 on his health insurance bill. That's serious savings for a small business. Jim has described the tax credit as a "time machine," turning the clock back on his insurance rates.

Premium Rate Review
After years of enduring double-digit rate increases with no recourse, small businesses like ours are encouraged that our states have new tools and new resources to review insurance rates and require insurers to provide justification for unreasonable rate increases. This is one of the most direct ways to protect small businesses and help us do our part to create jobs and grow the economy. There is a high level of market concentration in the health insurance industry and true competition – competition based on consumer value rather than competition based on cherry-picking risk pools – is largely absent. That is why we need robust rate review to ensure that small businesses are getting a fair shake.

Medical Loss Ratio Requirements
As small business people, we understand that the most important thing about a business is the value you provide to your customers. Yet the insurance industry has lost sight of that. The new minimum medical loss ratio requirements will restore a focus on providing us with value for our premium dollars. And if insurers fail to meet this basic standard, insurance customers like us will receive cash rebates starting next year – potentially to the tune of hundreds of millions of dollars.

State Insurance Exchanges
The state insurance exchanges due to come online in 2014 will level the playing field for small businesses. By creating a mechanism whereby we can band together and shop for coverage in one large pool, the exchanges will give us bargaining power, risk pooling, and greater choice.

The repeal of the health law or the undermining of its core provisions would cause serious harm to small businesses (see attached fact sheet). Certainly, there are improvements that can and must be made to the law. The 1099 reporting provisions and the paperwork burden they would create demand your attention. We were heartened that a majority of House members voted to fix this problem last summer (HR 5982, 7/30/2010), and we are confident that the current Congress will get this issue solved with appropriate speed. We are also confident this bi-partisan improvement can be made without undermining the core cost containment provisions and other protections contained in the Affordable Care Act.

The year 2010 saw a dramatic uptick in the percentage of small businesses offering health coverage: among businesses with 3-199 employees, the offer rate increased by 9 percentage points; among those with 3-9 employees, the offer rate increased 13 points, from 46 percent to 59 percent. News reports from the state level indicate that small businesses are taking advantage of the health law's benefits to start offering or coverage:

- Blue Cross Blue Shield of Kansas City recently reported that after letting local businesses know about the new tax credit, they enrolled more than 9,000 new members covered by 400 new employers. The company reported a 58 percent increase in small businesses purchasing insurance since April 2010, the first month after the passage of the ACA.
- Blue Cross and Blue Shield of Nebraska reported a 34 percent increase in health insurance sales to small businesses for the new year.
- A spokeswoman for Blue Cross of Idaho reported a "huge increase" in the number of small employers requesting quotes, and a shift in employers keeping coverage for their workers.

These are promising trends. We need to keep moving forward on health care, not return to the flawed system of the past, in order to help small businesses do our part for jobs and the economy.

With proper implementation of the health care law and effective regulations, we can truly level the playing field for small businesses like ours, stabilizing our health insurance costs and allowing us to focus on what we do best: creating jobs and providing important goods and services to communities across America.

On behalf of small business owners across our network, we appreciate this opportunity to share our experiences for your consideration.

Thank you, on behalf of the Main Street Alliance Executive Committee,

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the MAIN STREET alliance

Bad for the Bottom Line: How Rolling Back the Affordable Care Act Would Harm Small Businesses

Small Businesses are Moving Forward on Health Care

The percentage of small businesses offering health coverage to their employees rose significantly in 2010. For businesses with 3-199 employees, the health insurance offer rate increased 9 percentage points. This increase was driven by an even greater spike among the smallest businesses: the offer rate among businesses with 3-9 workers rose 13 percentage points, from 46 percent to 59 percent.[1]

Repeal of the Affordable Care Act Would Harm America's Small Businesses

Attempts to cast repeal of the Affordable Care Act (ACA) as "good for small businesses" obscure what repeal would actually do. Here are the facts:

Repeal would raise taxes for small businesses that qualify for the new premium tax credits.

- Starting for tax year 2010, small businesses may be eligible for health premium tax credits valued at **$38 billion** over a ten year period.[2] As many as **4 million businesses** may qualify for a credit, and about **1.2 million businesses** could qualify for the maximum credit of 35 percent of their insurance contributions (increasing to 50 percent in 2014).[3]
- Up to **16.6 million people** are employees of small businesses that will be eligible for the credit between 2010-2013.[4]

Repeal would leave small businesses vulnerable to continuing price gouging by insurers.

- The ACA gives states new tools and resources to require insurers to justify their rate increases.
- Without robust rate review, insurers will continue to raise rates at their whim. The most recent example: Blue Shield of California, which recently announced combined rate hikes of up to **59 percent**, and then thumbed its nose at the state's insurance commissioner when he attempted to delay the hikes.[5]

Repeal would eliminate the guarantee of a basic standard of value for premium dollars.

- Under the ACA, if insurers fail to meet new minimum medical loss ratios (MLR), they'll owe a rebate to customers.
- Projections for the small group market give a mid range estimate of **$226 million** in rebates, or about **$312 per person receiving a rebate**, for 2011. Individual market estimates add another **$521 million**.[6]

Repeal would gut consumer protections for small business owners, employees, and their families.

- The ACA puts in place important consumer protections: for example, a ban on pre-existing condition exclusions, new limits on insurance caps, and the ability to keep children covered up to age 26. These protections directly benefit health insurance customers in the small group and individual markets where small businesses get coverage.

Repeal would renege on the promise of choice, bargaining power, and risk pooling in insurance exchanges.

- Starting in 2014, small businesses with up to 50 employees (100 in some states) and self-employed people will be able to band together to shop for coverage in state insurance exchanges, gaining bargaining power and leveling the playing field with insurers. An estimated **29 million people** will get coverage through the exchanges by 2019 (**5 million** in small businesses that buy in as a group, and **24 million** more buying in on their own).[7]

Repeal would be bad for our national bottom line.

- The Congressional Budget Office estimated the repeal bill would add **$230 billion** to the federal deficit over 10 years, and much more over the following decade.

The final word on health care repeal: It's bad business for small business.

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[1] Kaiser Family Foundation and Health Research & Educational Trust, "Employer Health Benefits: 2010 Annual Survey," September 2010, p. 38, http://ehbs.kff.org/pdf/2010/8085.pdf.
[2] Congressional Budget Office letter to Senate Majority Leader Harry Reid, December 19, 2009, p. 6, http://www.cbo.gov/ftpdocs/108xx/doc10868/12-19-Reid_Letter_Managers_Correction_Noted.pdf.
[3] Families USA and Small Business Majority, "A Helping Hand for Small Businesses: Small Business Tax Credits," July 2010, pp 3-4, http://www.familiesusa.org/assets/pdfs/health-reform/Helping-Small-Businesses.pdf.
[4] S.R. Collins, K. Davis, J. L. Nicholson, and K. Stremikis, "Realizing Health Reform's Potential: Small Businesses and the Affordable Care Act of 2010," The Commonwealth Fund, September 2010, p. 7 [hereinafter Collins].
[5] Bobby Caina Calvan, "Blue Shield stands by California health care premium hikes," *Sacramento Bee*, January 15, 2011, http://www.sacbee.com/2011/01/15/3325248/blue-shield-stands-by-california.html.
[6] Federal Register / Vol. 75, No. 230 / Wednesday, December 1, 2010 / Rules and Regulations, pp. 74907-74908, http://edocket.access.gpo.gov/2010/pdf/2010-29596.pdf.
[7] Congressional Budget Office letter to House Speaker Nancy Pelosi, March 20, 2010, p. 9, http://www.cbo.gov/fipdocs/113xx/doc11379/AmendReconProp.pdf.

Mr. CUMMINGS. I see I still have 21 seconds. Mr. Shapiro, do you want to comment very quickly, because I have run out of time, just about?

Mr. SHAPIRO. Representative Cummings, there is a very good reason that the agencies bend toward the protection of people, trying to prevent injuries, cancers, so on and so forth: that is what Congress told them to do in the OSHA act and these other laws.

Mr. CUMMINGS. Thank you very much.

Mr. MCHENRY. I thank the ranking member and I recognize myself for 5 minutes.

Ms. Kerrigan, so in terms of small business, you say in your testimony that small businesses, first, they are important to the American economy, and I agree, and I think most Americans, middle America agrees as well. But you stated that small businesses bear a regulatory burden that is greater than a large business. Explain that. Just flesh that out for me.

Ms. KERRIGAN. Well, it is quite simple, and it is common sense that when a new regulation is imposed on a business, whether it is a new tax requirement, a new reporting requirement, when there is compliance involved, that they just do not have the scale to spread the costs around, and they many of them don't an accounting department or they don't have a compliance person or they don't have a vice president of safety.

So it is the business owner, it falls on them to deal with that new regulation. They may have to hire a consultant, perhaps bring on an accountant as a consultant or perhaps give them more hours or what have you. They just do not have, they can't absorb those costs as easily as a large enterprise, so that is the spirit behind, in 1980, the Regulatory Flex Act, that there was the common sense premise that regulation does have a disproportionate impact on small business and, therefore, the agencies do need to take that into account in terms of their regulatory actions.

Mr. MCHENRY. Thank you. Thank you.

Mr. Ellig, the Mercatus Institute does a report card of this regulatory burden. Can you mention that?

Mr. ELLIG. Oh, yes, sure. Our project is essentially looking at the quality of analysis that Federal agencies do when they issue regulations, and then looking at to what extent do they actually seem to use it in making decisions. And we are not trying to suggest that agencies ought to be in a straightjacket, where they have some quantitative formula, that they can only issue a regulation if the monetized benefits exceed the monetized costs, but, rather, we are looking for whether agencies actually seriously considered regulatory alternatives. Did they actually define the problem they are trying to solve and explain the barrier that gets in the way of achieving whatever it is the regulation is supposed to achieve? Did they demonstrate that this problem exists and so forth. So that is the kind of thing we are looking at.

Mr. MCHENRY. Thank you. Thank you.

With that, I yield the balance of my time to my colleague from New York.

Ms. BUERKLE. Thank you, Mr. Chairman.

Mr. Ellig, this question is for you. In your written testimony you mention that interviews with agency economists often reveal that

they faced pressure to modify their analysis of the regulations in order to support decisions that were already made. I wonder if you can expound on that for the committee and just tell us what agencies you were referring to.

Mr. ELLIG. Oh, sure. That is based on a study. There was a series of structured interviews of Federal economists in various health and safety agencies that was actually conducted by one of my colleagues, Dr. Richard Williams, shortly after he left the FDA, and that was one of the generalizations that he drew from his interviews.

Personally, I have heard stories of agency economists saying that they were told things like, on a Friday, come back and put more benefits in this analysis or don't bother showing up for work on Monday. And I think among economists who do this kind of thing for a living in Federal agencies it is well known that they are going to get some pressure to come up with an analysis that supports whatever the agency has decided to do, whether it is an increase in regulation or a decrease in regulation.

Ms. BUERKLE. Thank you.

Mr. Chairman, I yield back.

Mr. MCHENRY. Thank you. I certainly appreciate it and I certainly appreciate the chairman giving me the opportunity to sit in the chair. It is a mighty big chair for a guy my size.

With that, there are no more questions today, so, with that, the committee stands adjourned.

[Whereupon, at 1:46 p.m., the committee was adjourned.]

[The prepared statements of Hon. Dan Burton, Hon Michael R. Turner, Hon. Justin Amash, Hon. Edolphus Towns, Hon. Dennis J. Kucinich, Hon. Gerald E. Connolly, and Hon. Bruce L. Braley follow:]

Opening Statement
Rep. Dan Burton
House Committee on Oversight and Government Reform
Regulatory Impediments to Job Creation
February 10, 2011

Mr. Chairman, thank you for holding this hearing this morning; the first of many hearings, I hope, that will help us uncover what this government needs to do help America businesses create good paying private sector jobs. The government spending and government regulation strategies tried by our friends on the other side of the aisle have simply not succeeded in getting Americans back to work.

My Democrat colleagues can talk about the number of jobs their policies "saved" – although the definition of what exactly is a job "saved" keeps changing – and they can attempt to claim that their policies prevented a second Great Depression – although it is convenient that we can't prove government policy prevented something that ever actually happened – but the fact is that Americans are still hurting and the unemployment rate has been stuck above nine percent for 21 consecutive months, the longest stretch since World War II.

It is time to try a different approach and that approach is getting government out of the way so that the job creators can get down to business and create much-needed jobs to boost our economy. Even the President recognized this reality in his State of the Union Address when he personally called for a government-wide examination of regulations to "help our companies compete" and to "knock down barriers that stand in the way of success." In fact, speaking to the U.S. Chamber of Commerce just last week, the President called on industry to get off the sidelines and communicate directly with him about barriers to job creation.

As a co-equal branch of our Federal government I believe this Congress also has a responsibility to reach out to hearing directly from the business community about regulatory barriers that need modernizing or to be eliminated completely to create the right environment to grow jobs. And that is what why we are here today, to listen and learn; and I look forward to hearing what our witnesses have to say. Thank you.

Statement of Congressman Mike Turner
Committee on Oversight and Government Reform Hearing on "Regulatory Impediments to Job Creation."
Thursday, February 10, 2011 – HVC 210

Thank you Chairman Issa for organizing this hearing on the critical issue of regulatory impediments to job creation. I was pleased to read last month that President Obama signed an executive order for all of the agencies to review all of the current regulations on the books and repeal the outdated regulations that stifle job creation and make our economy less competitive. Upon further review of this executive order I found that these agencies must consider the "equity, human dignity, fairness and distributive impacts" of these regulations. This rings hollow to me since I cannot conceive about how a cost benefit analysis can possibly measure a regulations impact on human dignity.

The EPA released a statement that stated that they did not believe they would have to alter a single rule shortly thereafter. It does not strike me a genuine review of regulatory burden when they can come to such conclusions so quickly.

Members of this committee are familiar with various regulations that have direct impacts on job creation, but the regulations I am most concerned with are export controls. High-technology products play a key role in keeping our nation secure and in keeping our economy strong and competitive. Unfortunately, the current export control regime is eroding the United States' global technology leadership and costing jobs for skilled U.S. workers, because multinational companies are choosing to perform the research and development, as well as the manufacture, of cutting-edge products abroad to avoid being subject to U.S. export controls.

We must ensure that the technology that is critical to our nation's security is protected. The problem is that the system we currently have for export controls is broken up between different agencies and the question of if a company needs a license depended on which agency one asked. It is due to the fact that we've had two very different control lists with agencies apparently fighting over who has jurisdiction.

U.S. producers of commercially available technology are losing sales to foreign producers that are not subject to the same export constraints. Existing export controls cover too many products that lack a significant military application or are readily available from other countries.

Unduly burdensome and restrictive export controls that are not justified by U.S. national security and foreign policy impede private sector job creation, discourage innovation, hurt economic growth and harm our national global competitiveness. The longer the current situation continues the more markets and high-paying, high-skilled jobs we cede to foreign competitors.

I am aware that the relevant agencies are actively pursuing export control reform, the existing regulations and the status of the reform should unquestionably be part of the regulatory review mandated by the resolution the House will consider on the floor today. My fear is that the Administrations review is be hampered by turf battles between the agencies and that the direction from the White House to address this problem may have enough caveats to prevent any real progress from being made on this effort.

I again thank the Chairman for today's hearing and yield back the balance of my time.

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

FULL COMMITTEE HEARING

"REGULATORY IMPEDIMENTS TO JOB CREATION"

2/10/2011

OPENING STATEMENT FOR REP. JUSTIN AMASH (MI-03)

"Thank you, Mr. Chairman, for holding this important hearing today. Regulations put in place by unelected, unaccountable administrators have had a profound, negative impact on our nation's economy and the everyday lives of all Americans. The limited government that the Founders intended us to have has become an enormous, powerful, over-reaching government. I am eager to hear what our witnesses have to say on this important topic, and with that, I yield back."

Statement for the Record

OGR Full committee hearing – Regulatory Impediments to Job Creation

February 10, 2011

Rep. Ed Towns

Chairman Issa, Ranking Member Cummings – thank you both for holding this timely and important hearing on the regulatory impediments to job creation. I am pleased that we are examining this issue, as it affects all of our constituents in every district across the country.

As you know, unemployment is not a partisan issue. Those who have lost their jobs are not all affiliated with one political party or the other. It's a dire situation that has harmed many families across the country, regardless of race, gender, religion, or political affiliation. For this reason, it is crucial that Members of Congress, along with our Administration, continue to work together to improve our economy.

In doing so, we must examine the whole picture. We cannot fairly assess any given regulation without looking at the benefits along with the costs. A report issued by the Office of Management and Budget in 2010 estimated that annual benefits of regulations issued between 1999 and 2009 were between $128 billion and $616 billion, while the estimated annual costs were between $43 billion and $55 billion. While these costs are significant, the benefits are between three and eleven times higher.

Furthermore, it is useful to note that not all regulations impede job creation. Some, in fact, encourage or create jobs. In addition, regulations provide protections for many of our most basic societal needs. They protect our health, our safety, and our welfare – and many of them, at their inception, were heavily criticized by industry groups as being too 'costly.' However, over time, the resilience of our nation's businesses have proven capable of minimizing the costs of implementation, while helping to maximize the benefits to society. One prime example is our nation's seat belt laws. When they were first debated, a number of industry groups were extremely against them. They feared that the costs of installing these safety measures would be too burdensome. However, since the implementation of these laws, we have seen the number of motor vehicle accident casualties decline significantly. The costs to society were too great to retreat and not pass these laws and regulations, and in turn, the auto industry adapted. Jobs were maintained, possibly created, and society benefited as a whole.

We also should not forget some of the unquantifiable benefits of regulations. In this area of the debate, it is far too easy to hear only a cost figure, as that seems concrete. However, regulations that provide for cleaner air so that one could see the top of a mountain rather than a smog-filled sky, or drink tap water without the fear of contracting a water-borne illness – regulations like these do not have concrete figures that we could tout. We could not say "being able to drink this clean water has a $1 million benefit." It's simply priceless. There are too many unquantifiable side-benefits to these – the number of productive, healthy days one would be able to have because they did not contract asthma from living in

a smog-filled city; or the number of days one would be able to come into work because they were not sick in a hospital with cholera or dysentery from drinking unclean water. In spite of the unquantifiable nature of these benefits, they are crucial to our everyday functioning.

There may be some debate as to the administrative procedure used to create regulations. Current federal law requires that agencies post notice of proposed new rules in the federal register, and allow for an open public comment period to receive feedback from interested parties. In many cases, industry groups, as well as consumer groups and the general public, and sometimes even Members of Congress, provide feedback during the public comment period to assist agencies with the development of the final rule. Once the comment period closes, the agency is provided the opportunity to review the comments and make changes to the proposal. Sometimes the feedback in incorporated, and other times it is not. However, the intent is that all parties that have an interest in the final rule be afforded an opportunity to be heard. We should be certain that the process ensures that every proposed regulation takes into account the anticipated costs, as well as the benefits, and any anticipated job creation or loss.

As we continue this debate, I hope that Members on both sides of the aisle are able to work together to ensure that the procedure used in adoption regulations, as well as their substance, are improved, so that we can move our economy towards a full recover.

Thank you again, Mr. Chairman, and Ranking Member Issa for holding this important hearing.

Statement of Dennis J. Kucinich
Ranking Member, Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending
At a Hearing entitled,
"Regulatory Impediments to Job Creation"
Committee on Oversight and Government Reform
February 10, 2011

Today's hearing could have served a valid purpose, but the manner in which the Majority has conducted its investigation invalidates these proceedings.

First, the Majority should have incorporated the views of the nation's largest employers. But they did not do that. According to the online publication ThinkProgress, "None of the ten biggest publicly owned employers in the U.S. responded to the survey as an individual company." Furthermore, the majority's conclusions are not based on the opinions of any of "America's top 30 job creators", which includes employers in every field, such as the retail giant Best Buy, the communications giant Comcast, the computer software colossus Microsoft, the business services giant ADP, and the medical device maker Medtronic – to name just a few.

Second, the Majority succumbs to Maslow's maxim, "When all you own is a hammer, every problem starts looking like a nail." Sixty-two percent of the basis for today's hearing is the view of lobbyists. The job of lobbyists is, in the first instance, to influence the political process of law and regulatory rule making. If you ask lobbyists how to create jobs, their answer will be: change laws and regulations...and employ us to do it for you! The Majority's views have been dominated by the lamentable fact that 106 of the 170 responses forming the basis of the Majority's views and today's hearing were provided by lobbyists.

Today's hearing is a missed opportunity for serious oversight. Unfortunately, all the Majority has accomplished with this hearing is to create a megaphone for the narrow, self-interested views of lobbyists. I would predict that the only jobs created as a result of this hearing will be taken by lobbyists.

Statement of Congressman Gerald E. Connolly

Committee on Oversight and Government Reform

"Regulatory Impediments to Job Creation"

February 10th, 2011

Mr. Chairman, it is ironic that the Committee is having a hearing on regulatory impediments to job creation as our economy recovers from a recession caused principally by *deregulation* of the financial sector and lack of regulatory oversight of mortgage banking. Congress consciously took power out of the hands of regulators, ending restrictions on the combination of traditional and investment banking (Gramm-Leach-Bliley, 1999) and restrictions on the shadow banking sector, summarized by the bill writers as "Lift[ing] some restrictions governing nonbank banks."[i] Congress also prohibited regulation of credit default swaps by passing the Commodity Futures Modernization Act of 2000. By deregulating banks and investment banks, Congress created a market environment that imperiled banks themselves, leading to four of five investment banks going bankrupt during the financial crisis. As Senator Susan Collins said,

> I am convinced that significant regulatory reforms are required to restore public confidence and to ensure that lack of regulation does not allow such a crisis in the future. The current structure of our financial system lacks much needed reporting and transparency requirements in the swaps market, which many experts believe helped contribute to the current financial crisis.[ii]

Alan Greenspan said the same thing in an appearance before our Committee in 2008, stating "Those of us who have looked to the self-interest of lending institutions to protect shareholders' equity, myself included, are in a state of shocked disbelief,"[iii] When the financial collapse occurred at the end of the Bush Administration, the truly productive sectors of our economy—manufacturing, technological innovators, providers of actual services—suffered the most. The Republican narrative suggests that regulations have eliminated jobs and inhibited the recovery, when it fact deregulation led directly to a catastrophic financial collapse from which we are still recovering.

This history is important because it suggests that longstanding EPA regulations did not cause the economic challenges our country now faces. In fact, the economy has more than doubled in size since bipartisan adoption of the Clean Air Act in 1970, which strengthening amendments under the Ford and H.W. Bush Administrations.

Of course, as President Obama has recognized, it is prudent to review regulations to ensure they are still efficacious and are implemented efficiently. One example of a wildly successful regulation is acid rain controls implemented by EPA in accordance with the 1990 Clean Air Act Amendments. Some of my colleagues will recall an era when the Republican Party believed in protecting public health and the environment, as demonstrated by George H.W. Bush's leadership in passing the Clean Air Act

Amendments of 1990. At the time, utilities claimed that reducing sulfur dioxide and nitrogen oxides would cause electricity price spikes. Not only did prices remain on their historic trajectory, but industry developed cost effective pollution reduction methods to meet pollution reduction targets by 2007, three years ahead of schedule. In fact, acid rain regulations prevented 200,000 premature deaths even while electricity *supply* increased 30%. The acid rain program demonstrates that we can protect the environment while facilitating economic growth.

Our economy has begun to recover while clean air regulations have finally been administered in accordance with the law. During the Bush Administration, gross private domestic investment fell from $1,970 billion to $1,529 billion. Under the Obama Administration, the stimulus, Dodd-Frank financial reform, and EPA regulation of greenhouse gas pollution, gross private domestic investment has begun to recover, growing from $1,529 billion at the beginning of 2009 to $1,844 billion by late 2010. Corporate profits under this Administration have grown as well, from $1,223 billion in the first quarter of 2009 to $1,827 billion in the third quarter of 2010, a 49% increase.

Today the Republican leadership is peddling an intellectually vacuous narrative, that regulations are impeding job creation. I reject that premise on the basis of the financial collapse and incipient recovery. There are dire public health and national security threats to the Republicans' false narrative: The Republican leadership has repudiated the Nixon, Ford, and George H.W. Bush Administration's commitment to clean air by attempting to repeal the Clean Air Act, even while they attack the very financial regulations that are essential for long term economic growth. As the history of financial market and clean air regulation illustrate, our economy's health depends on common sense rules of the game that facilitate innovation and investment while discouraging risky investments and dangerous market externalities.

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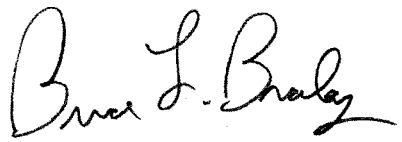
[i] http://banking.senate.gov/conf/grmleach.htm

[ii] http://senatorcollins.blogspot.com/2009/05/senator-collins-introduces-bill-to.html

[iii] http://www.nytimes.com/2008/10/24/business/economy/24panel.html



February 10, 2011

Congressman Bruce Braley Oversight Statement

The Plain Language Act

I'm pleased that the Committee is holding this important hearing today on "Regulatory Impediments to Job Creation." I'm a strong proponent of reducing burdens on small businesses and making the communication between government and the private sector more efficient. That is why I was pleased to see my *Plain Language Act* signed into law last year.

The *Plain Language Act*, a bill that received strong bipartisan support, requires the federal government to write documents such as letters from the Social Security Administration or a notice from the Department of Veterans Affairs in simple, easy-to-understand language.

Anyone who's done their own taxes knows the headache of trying to understand pages and pages of confusing forms and instructions. There is no reason why the federal government can't write tax documents and other documents, including regulations, in language we can all understand.

Writing government documents in plain language will increase government accountability and will save Americans time and money. Plain, straightforward language makes it easy for taxpayers to understand what the federal government is doing and what services it is offering. Small businesses will also see substantial benefits by eliminating federal gobbledygook.

It is my hope that this Committee and the House of Representatives will follow this example by communicating what we do here in Congress in plain language. Last month, I sent a letter to the new House leadership urging them to change the Rules of the House to require that Committees post a Plain Language section-by-section analysis of a bill on their public websites 72 hours before a bill is considered on the House Floor.

Requiring Plain Language versions of legislation will allow constituents a better understanding of what we are working on in Congress. Plain, straightforward language makes it easy for taxpayers to understand

what the federal government is doing and to hold them accountable. Unfortunately, my proposed change was not adopted.

This is an idea that can be expanded to all areas of government communication. It is my hope that we can build on the success of the *Plain Language Act* from last year, and move forward with Plain Language in regulations. This will save businesses of all sizes time and money when trying to comply with government requirements.

Mr. Chairman, thank you again for holding this hearing and I look forward to continuing to advocate for the use of Plain Language here in the House of Representatives.

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