

The follow-up study by New York State remedied the first error, and did include a control group.<sup>(17)</sup> While this study did find EBL associated with renovation, the increase disappeared when the study excluded the test samples that did not follow the study protocol: clean the floor until there is no visible dust. EPA's attempt to dismiss the study in the final rule by stating that the "study did not measure dust lead levels" does not address the fact that there was no effect shown when there was no visible dust.<sup>(18)</sup> This is consistent with our contention that a "no visible dust" standard is all that is needed here. Under the current LRRP and any modification to the opt-out provision, there is no need for an additional cleaning verification step, if there is no visible dust, and the firm follows lead-safe practices (whether under EPA rules or lead-safe guidance). The lack of visible dust can be easily handled using an EPA-specified checklist, without the need for comprehensive panoply of EPA paperwork, cleaning verification and training requirements.

For example, Advocacy found data from the City of Milwaukee, a city with a very active lead paint program, to be very instructive, and consistent with the analysis that lead renovation contributes very little to health hazards. This data was submitted to EPA in the initial rulemaking, and shows that of the 577 cases of lead poisoning reported to the Health Department in 2004-2005, only four of the cases, or 0.7 percent, were linked to renovation or remodeling activities. In each of those four cases, do-it-yourself (DIY) occupants performed the projects. These cases are not addressed by the current LRRP rule nor the proposed elimination of the "opt-out."<sup>(19)</sup> This result is consistent with contractors using reasonable care to clean up and eliminate all visible dust, care that is not being used by DIYers.

Despite the Executive Order 12866's requirement to include a benefits analysis, EPA's original OMB submission contained no benefits estimates.<sup>(20)</sup> The agency frankly acknowledges that its attempt at estimating benefits was "crude".<sup>(21)</sup> The estimates are, therefore, extremely speculative, at best.

## **II. EPA Should Delay Implementation of Any Opt-out Revisions Until the New Test Kits Are Ready and Renovators Are Trained.**

EPA can significantly reduce the cost of this rulemaking by delaying the compliance date for any rule revisions. EPA estimates that the first year \$500 million LRRP opt-out annual costs would be reduced to \$300 million in the second year when the new test kits are expected to be available.<sup>(22)</sup> The test kits would allow renovators to avoid the costs of this rule if the low cost test kits verify that the affected unit was free of lead paint. Thus, given the fact that the opt-out universe costs are otherwise extremely high, and the lead exposure extremely limited, a delay of the opt-out portion of the rule, at least to the second year, to assure that the lower cost test kits would become available, would save \$200 million annually, while still accomplishing statutory goals.

In addition, as the National Association of Home Builders points out in detail, it is highly unlikely that the 300,000 contractors affected by EPA's removal of the "opt-out" provision will be sufficiently trained by the April 2010 compliance date.<sup>(23)</sup> Rather than create this large shortfall in trained workers and risk additional noncompliance, EPA should delay any expansion of the LRRP rule.

## **III. EPA Should Retain the Current Opt-out Provision.**

Under the Regulatory Flexibility Act (RFA), EPA is to consider all significant regulatory alternatives that achieve the statutory purpose.<sup>(24)</sup> Clearly, EPA determined that the current rule complied with the requirements of the Toxic Substances Control Act (TSCA), and certainly should remain among the regulatory options available for decision makers. EPA's failure to seriously consider the obvious alternative of retaining the current opt-out provision is a clear violation of the RFA's requirement to examine significant alternatives that would minimize the burden on small entities.

In addition, EPA's reasoning for rejecting the current opt-out provision is extremely weak. EPA indicates that it is concerned that "future tenants could unknowingly move into a rental unit where dust-level hazards created by the renovation are present... [or that] hazards created during renovations in an owner-occupied residence conducted prior to a sale will be present for the next occupants...."<sup>(25)</sup> In addition, "Visiting children who do not spend enough time in the housing to render it a child-occupied facility may nevertheless be exposed to lead from playing in dust-level hazards..., such as [spending time] in the home of grandparents."<sup>(26)</sup> Surprisingly, these very concerns were addressed in the final LRRP preamble, yet EPA does not explain this complete reversal in position from April 2008 and October 2009.

In 2008, EPA was concerned about the Congressional intent behind the lead legislation, and was mindful of the Congressional instruction to focus on the target housing (children under 6 years old), and to account for costs and affordable housing. EPA explained that "it does not believe it is an effective use of society's resources to impose this final rule requirements [sic] on all renovations in order to account for the portion of homes without young children that will be sold to families with young children following renovations."<sup>(27)</sup> EPA further informs the reader that the lead disclosure rule, under 40 CFR §745, is designed to address this situation to apprise prospective buyers about lead-based paint hazards.<sup>(28)</sup> It is difficult to reconcile those 2008 statements with EPA's 2009 approach without further explanation, or any new science, in the proposal.

To illustrate the point, it seems overly burdensome for a window installer who is replacing a single window (or a wallpaperer disturbing more than six square feet) for a home with two resident 50 year-old adults to comply with the entire LRRP rule requirements, but that is exactly what EPA would be requiring here. The lead-safe pamphlet and knowledge about lead-safe practices should suffice for the population that is not the focus of this rule. This differential approach makes sense to us and made sense to Congress because adults and older children do not ingest lead dust from the floor or soil, as younger children do.

#### **IV. EPA Should Consider a Disclosure Option rather than the Opt-out Provision.**

One of the classic forms of less intrusive regulatory alternatives that minimize costs and provides benefits is an information disclosure rule, instead of the traditional command and control regulation now being considered by the agency. In this case, EPA and HUD could revise the current lead disclosure form for the opt-out situation by adding the phrase "other than remodeling" after the word "hazards" and before the first parenthesis in line (a) and after the word "seller" and before the first parenthesis in line (b). A new line (c) would be entered in the section of "Seller Disclosures" as follows:

(c) Remodeling (check i, ii, or iii, and check iv. if applicable):

(i) There has been no remodeling or renovation to this unit while I have owned it since {effective date of rule}.

(ii) All remodeling or renovation to the unit while I or my company has owned it since {effective date of rule} has been done by lead-certified contractors; a copy of each contractor's certificate is attached.

(iii) There has been remodeling or renovation to the unit while I or my company owned it since {effective date of rule}, but it was not done by lead-certified contractors or I cannot find the certificate(s).

(iv) The unit has been cleared as lead-safe under the applicable HUD clearance procedure.

This disclosure rule would reduce the incentive to hire uncertified contractors or to do the work oneself without lead-safety training. The rule would be self-enforcing, requiring no expenditure or personnel by EPA or state agencies beyond administration of training programs. The disclosure rule, in lieu of all the complex EPA requirements, is particularly appropriate where the evidence of expected benefits are likely to be minimal or nonexistent, and where lead-safe practices are well known and in common practice.

#### **V. EPA Can Simply Prohibit the Lead-Generating Practices Excluded by the Current LRRP for the Opt-out Scenario.**

EPA did solicit comments on one alternative that Advocacy supports. Specifically, we support the alternative of simply prohibiting the individual practices that EPA identified as producing excessive lead dust for the opt-out situation. It would vastly simplify compliance with the rule by limiting it to exclusion of these practices, which is very familiar to persons who already follow lead-safe practices, and does not require paperwork, extra training, certification, etc. This would also substantially lower the costs of compliance, compared to EPA's proposal. Such an alternative would very likely capture almost all the lead reduction benefits without the remaining regulatory requirements.<sup>(29)</sup>

## **VI. EPA Needs to Address the Cumulative and Overlapping Impacts of the Series of Planned LRRP Amendments, and not just the Opt-out Proposal Alone.**

EPA's has decided to divide the LRRP-related rulemakings into three separate rulemakings, and therefore, has not accounted for the cumulative or overlapping impacts of these connected rules. In the absence of a consent decree, in the normal course, this would be a single rulemaking addressing all forms of lead renovation activities, just as the current LRRP was done. However, by separating these provisions into three separate rulemakings, EPA avoids the accumulation of economic impacts.

In this opt-out rulemaking alone, EPA finds that the 75,000 non-employer impacts (mostly single employee firms) would face economic impacts of 1.3 percent to 4.7 percent of revenues, which is extremely high.<sup>(30)</sup> If EPA had added the additional expenses of the current LRRP rule, the projected economic impact would likely significantly exceed the range for this single rule. Furthermore, the expense of adding the HUD clearance procedure to all LRRP and opt-out renovations would further exacerbate the problem. Thus, EPA and the public is denied the opportunity to explore the actual cumulative impact of these requirements because EPA decided to consider these revisions separately, rather than at one time, as is more appropriate.

As a result, EPA did not have the opportunity to develop any alternatives that address, for example, the overlap between the opt-out situation and the costly HUD clearance process. The purposes of the RFA include consideration of both cumulative and overlapping Federal regulations in some organized fashion to aid the development of reasoned decision making.

EPA should consider all three rulemakings at one time, and reissue this proposal after consideration of the cumulative and overlapping impacts of the rules yet to come.<sup>(31)</sup>

## **VII. EPA Needs to Comply with SBREFA Panel Procedures for Future Rule Amendments.**

EPA has the opportunity to profit from using the SBREFA panel process for the remaining regulations, and possibly the opt-out, if it so chooses. Under section 609(b) of the RFA, EPA is required to convene a SBREFA Panel any time "a rule is promulgated which will have a significant economic impact on a substantial number of small entities." At a minimum, the agency should use this process for the consideration of the remaining LRRP amendments.

Since EPA had already signed a consent decree requiring the proposal to be issued by last month, without consulting with this office, Advocacy did not have a timely opportunity to discuss the SBREFA panel requirement with EPA before this proposal was issued. Given the numerous inadequacies and lost opportunities discussed above under both TSCA and the RFA, and the historical utility of SBREFA panels to EPA decision making, EPA could have benefited substantially from a SBREFA panel proceeding. It is useful to remember that considerations of RFA principles in 1980 through 1982, in consultation with this Office, led directly to EPA's more aggressive removal of lead from gasoline, possibly EPA's most important contribution to human health since the founding of EPA. This clearly demonstrated that the RFA and environmental principles can be accommodated.

While it is still timely, however, we wish to address the issue of the applicability of the SBREFA process to the two future rulemakings. Initially, we restate that these two rulemakings and the current rulemaking should all be combined. There should not be any question that the last planned rulemaking, involving commercial and other nonresidential buildings, which are entirely outside of the scope of "target housing" as defined in TSCA, was not the subject of the panel in 2000. EPA needs a panel to address that unanticipated issue. Having established the need for one panel, it makes the most sense that EPA convene a panel, as expeditiously as possible so that it may consider, pre-proposal, changes to the clearance procedure, and secondly, post-proposal, changes to the opt-out provisions. Even though EPA has already issued the opt-out proposal, the small entity representatives advising the SBREFA panel, may have some very useful targeted advice that could be helpful as EPA develops a final rule.

Furthermore, despite the fact that the "clearance" issue was addressed in the earlier 2000 SBREFA panel, substantial new information has been developed since 2000. A different economic climate currently exists today that warrants consideration of this issue by a new panel. More significantly, if EPA determines that it will be

going forward with a panel, it would be more efficient to address all possible issues at one time, and to hold the panel as early as reasonably possible.

#### **VIII. Conclusion.**

EPA's plans to promulgate a series of additional requirements to supplement the already costly LRRP rule will impose substantial burdens on small firms, homeowners and building owners, with questionable benefit. In compliance with the RFA, EPA should move expeditiously to initiate SBREFA panels for these rules, in time to receive advice on the existing proposal.

We urge EPA to delay any rulemaking changes for at least one year until more trained personnel and the new test kits become available.

With respect to the proposal to eliminate the "opt-out" option, EPA fails to explain its 180 degree reversal, without any new science. The agency also fails to take into account, in any discernible manner, the negative effect on small businesses and affordable housing. Lastly, the agency's evidence supporting the estimated benefits is extremely speculative, at best.

EPA's proposal would instead impede low-income residents from improving their residences by imposing unnecessarily costly requirements. In 2008, EPA declared "that homeowners without young children or where expectant mothers do not reside should be able to choose whether or not work done in their own homes conforms to the requirements of the rule."(32) This proposal removes this choice from the homeowner. We respectfully urge the agency to reconsider its decision on this important rule, and take other appropriate action on the remaining issues.

Sincerely,

/s/

Susan M. Walthall  
Acting Chief Counsel  
Office of Advocacy

/s/

Kevin Bromberg  
Assistant Chief Counsel for Environmental Policy  
Office of Advocacy

cc:

Steven Owens, Assistant Administrator, Office of Pollution Prevention  
And Toxics, EPA

Cass Sunstein, Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

Docket ID Number EPA-HQ-OPPT-2005-0049

#### **ENDNOTES**

1. Under the current "opt-out" provision, the homeowner may choose whether or not to comply with the full set of LRRP requirements.
2. The LRRP already prohibits or restricts a series of work practices that generate excessive amounts of lead dust.

3. 5 U.S.C. §§ 601 et seq.

4. 67 Fed. Reg. 53461 (August 16, 2002).

5. The Panel solicited comments from the SERs and prepared a report of its deliberations that included a number of recommendations on how to reduce the potential impact of the rule on small entities. The report is available in the docket and on EPA's website. Final Report of the Small Business Advocacy Review Panel on EPA's Planned Proposed Rule: Lead-Based Paint; Certification and Training; Renovation and Remodeling Requirements, March 3, 2000. <http://www.epa.gov/lead/pubs/rfp-sbrefa.pdf>

6. 45 C.F.R. § 35.1320.

7. The current proposal alone imposes \$500 million in first year costs according to EPA's estimate. See *infra*, fn. 22.

8. See National Association of Home Builders Comments in Docket EPA-HQ-OPPT-2005-0049, filed November 20, 2009, at p. 1.

9. 73 Fed. Reg. 21692, 21701 (April 22, 2008).

10. 73 Fed. Reg. 21692, 21710 (April 22, 2008).

11. 74 Fed. Reg. 55506, 55518 (October 28, 2009).

12. See above discussion of the 2008 rule.

13. [http://www.sba.gov/advo/laws/comments/epa06\\_0525.pdf](http://www.sba.gov/advo/laws/comments/epa06_0525.pdf).

14. USEPA. Lead Exposure Associated With Renovation and Remodeling Activities: Phase III, Wisconsin Childhood Blood- Lead Study (EPA 747-R-99-002, March 1999).

15. HHS, PHS, CDC. Children with Elevated Blood Lead Levels Attributed to Home Renovation and Remolding Activities—New York, 1993-1994. Morbidity and Mortality Weekly Report (45(51); 1120-1123, January 3, 1997).

16. HHS, PHS, CDC. Children with Elevated Blood Lead Levels Attributed to Home Renovation and Remolding Activities—New York, 1993-1994. Morbidity and Mortality Weekly Report (45(51); 1120-1123, January 3, 1997).

17. Reissman, Dori B., Thomas D. Matte, Karen L. Gurnite, Rachel B. Kaufmann, and Jessica Leighton. "Is Home Renovation or Repair a Risk Factor for Exposure to Lead Among Children Residing in New York City?" *Journal of Urban Health: Bulletin of the New York Academy of Medicine*. Vol. 79, No. 4, 502-511, (December 2005).

18. 73 Fed. Reg. 221692, 221740 (April 22, 2008).

19. U.S. E.P.A., City of Milwaukee Health Department, Wisconsin, Comment: *Lead; Renovation, Repair, and Painting Program, Proposed Rule*, EPA-HQ-OPPT-2005-0049-0602 (2006).

20. See redlined version of EPA Economic Analysis in EPA-HQ-OPPT-2005-0049.

21. Section 5.2 of the Economic Analysis states that "EPA has calculated crude benefit numbers, for several groups of individuals protected by removing the opt-out provision...the average benefits per individual from the previous analyses have not been modified to reflect any differences in exposure between populations protected by the 2008 rule and those protected by the removal of the opt-out provision....The amount of error in these values is unknown." In sum, the estimates are of unknown accuracy, and the estimates were not adjusted downward to reflect the much larger exposures of the 2008 rule.

22. 74 Fed. Reg. 55506, 55516 (October 28, 2009).

23. See fn. 8.

24. 5 U.S.C. §603.

25. 74 Fed. Reg. 55506, 55509 (October 28, 2009).

26. 74 Fed. Reg. 55506, 55509 (October 28, 2009).

27. 73 Fed. Reg. 21692, 21710 (April 22, 2008).

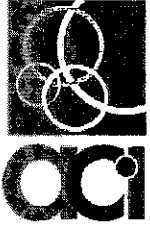
28. Id.

29. In the April 2008 LRRP Economic Analysis, EPA found that the majority of the benefits were accounted for simply by the prohibited practices provisions (see Table 5-13). We also note, however, that this particular analysis showed large unexplained inconsistencies, and is subject to considerable uncertainty.

30. 74 Fed. Reg. 55506, 55519 (October 28, 2009). Also, EPA points out that this may be an overestimate of impact because some non-employers "have significant issues related to understatement of income". However, EPA fails to add that the data supporting the underestimation of income shows that, but for a very small minority of firms, there is not a very significant understatement in comparison to total income. Therefore, these estimated average costs/revenue economic impacts, across firm types, are unlikely to be significantly affected.

31. EPA explicitly excluded comments on the LRRP work practices, which includes the new and elaborate clearance verification procedure, which has been almost universally criticized by all interest groups. EPA needs to take the opportunity to defer implementation of this procedure until it completes the upcoming rulemaking regarding a new clearance procedure or take other action before the LRRP becomes effective in April 2010.

32. April 2008 Final Regulatory Flexibility Act Analysis, EPA Docket #EPA-HQ-2005-0049-0951.5, at p. 8.



american cleaning institute®  
for better living

January 13, 2011

The Honorable Darrell Issa  
Chairman  
Committee on Oversight and Government Reform  
B 350A Rayburn House Office Building  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Issa:

Thank you for your letter of December 29, 2010. ACI® appreciates the interest which prompted you to write. We seek an open channel of communication with you, your colleagues, and your staff.

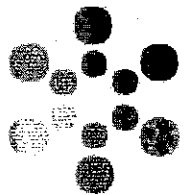
The American Cleaning Institute® (ACI) is the trade association representing the \$30 billion U.S. cleaning products market. ACI members include the formulators of soaps, detergents, and general cleaning products used in household, commercial, industrial and institutional settings; companies that supply ingredients and finished packaging for these products; and oleochemical producers.

ACI seeks to advance policies that enhance our members' ability to innovate and do not obstruct their speed to market. ACI is currently addressing a variety of issues with relevant federal government regulatory agencies through normal channels. At this time, we believe our concerns will be addressed. Toward that end, ACI does not have a specific matter to bring to the attention of the Committee at this point in time.

If you should have further questions or comments please do not hesitate to contact me at [erosenberg@cleaninginstitute.org](mailto:erosenberg@cleaninginstitute.org) or Douglas Troutman, ACI's Senior Director of Government Affairs [dt troutman@cleaninginstitute.org](mailto:dt troutman@cleaninginstitute.org) at your convenience or at (202) 347-2900.

Sincerely,

Ernie Rosenberg  
President and CEO



## AmericanCoatings ASSOCIATION

January 10, 2011

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

Dear Chairman Issa:

On behalf of the American Coatings Association (ACA), thank you for the opportunity to identify proposed or existing regulations that are negatively impacting our industry and our continued ability to innovate in a globally competitive economy.

As you pursue the larger reform agenda, we believe that some concrete oversight action is needed on the following areas of health, safety and environmental policy being actively pursued by the current administration. While ACA will continue to pursue all available redress for our concerns, we welcome your consideration and support, in particular as the nation seeks to expand what appears to be an emerging but still fragile economic recovery.

### **DOT Special Permits**

In order to obtain a Special Permit, applicants must submit an application containing specific information regarding transporting the hazardous material at issue. US DOT is required to make a finding that the applicant is "fit" prior to granting a Special Permit. During 2009, the Pipeline and Hazardous Materials Safety Administration issued guidance which substantially changed the criteria upon which a "fitness determination" is made. The guidance, however, articulates criteria that appears to be beyond PHMSA's authority and, in addition, does not articulate what constitutes fitness or a finding of "unfit."

ACA is signatory to a coalition effort designed to convince PHMSA to initiate a rulemaking to articulate the fitness criteria more clearly. This petition for rulemaking was filed in mid-December.

In addition, the coalition has also sought a legislative amendment to the Hazardous Material Transportation Act (it is up for reauthorization) to require PHMSA to establish fitness criteria for a Special Permit by rulemaking. Representative Graves (R-MO), Chair of Small Business Committee, has indicated his support for such an amendment and has drafted such legislation. It has not been introduced. The desired solution is a rulemaking to establish these criteria. This can be accomplished by PHMSA responding positively to the petition for rulemaking. It could also be accomplished by the Graves Amendment. At this point in time, PHMSA has indicated that a rulemaking is appropriate yet there is no evidence that a rulemaking has been initiated.



The final rule issued earlier this week (HM-233B) did not address the fitness criteria. It did address information that is required to be included in the application. The final rule requires significantly more information on the application and makes the process more complex. There is a significant backlog of applications and renewal applications (over 2500) at PHMSA and this final rule will only add to that backlog.

#### **National Aerosol Coatings Rule**

The national rule for aerosol coatings contains a very short list of compounds (169) that can be used in aerosol coatings formulas. This is in contrast to the California rule where the Table of MIR Values contains over 800 (and soon will be expanded to include over 1200). If a company wants to use a compound that is not on the EPA list, the unlisted compound must be assigned a default value of 22.04, regardless of the actual MIR value on the ARB Table. A default value of 22.04 makes it impossible for any formulator to use an "unlisted EPA compound."

We have petitioned EPA to add compounds to this list and at least one of these petitions was filed over a year ago. EPA has not responded; even to acknowledge the filing of the petition.

The aerosol coatings regulation should be amended to include a mechanism to add compounds to this list more efficiently. As it currently stands, in order to add compounds to the list, it must be done in a full-blown rulemaking with a NPRM, notice and comment, etc. As you know, this takes EPA years to complete. In the meantime, formulators are prevented from using these compounds that have been tested and assigned reactivity values in the California rule.

#### **EPA Boiler MACT**

The Environmental Protection Agency (EPA) has proposed a rule that would establish stringent emissions standards on industrial and commercial boilers and process heaters (i.e. Boiler MACT). This broad-reaching proposal will directly impact paint manufacturers with new boiler operating and compliance costs with resultant impacts on economic recovery and jobs in the industry. Recognizing the significant impacts of its initial proposal, EPA has asked the federal District Court for the District of Columbia for an extension to re-propose the rule. While this may be taken as a hopeful sign, any new EPA proposal must ensure that the standards are economically feasible and achievable in practice for all manufacturers that operate boilers.

#### **EPA NAAQS for Ozone**

The EPA in January 2010 issued a proposal to tighten the National Ambient Air Quality Standards (NAAQS) for ground-level ozone standard from the existing 75 parts per billion (ppb) to a range between 70 ppb and 60 ppb. ACA's longstanding concern with such a move is the impact on many of our industry's products which necessarily contain some volatile organic compounds (VOC's), precursors to ozone formation, which are used to protect the substrates upon which they are applied. Often in the debate on tightening air quality standards the EPA has not fully considered the life-cycle impacts of their proposals including the potential impact on the efficacy of the reformulated products and their ability to forestall deterioration of our nation's infrastructure. While our industry continues to innovate and find ways to reduce VOC emissions and maintain product quality, these far-reaching proposals by the agency may prove impossible to meet. We believe it is important that any action by EPA to reduce the ozone standard weigh the health and environmental benefits as well as the economic and infrastructure impacts.

## **OSHA On-Site Consultation**

The Occupational Safety and Health Administration (OSHA) has recently moved to a more adversarial approach toward business, issuing enforcement notices as a result of employers, in particularly small businesses, seeking to consult with OSHA to better understand and comply with existing workplace safety standards. As a result, businesses will likely cease reaching out to OSHA for help and be less likely to cooperate with OSHA programs seeking to foster improved compliance.

## **OSHA Noise Proposal**

OSHA recently indicated that it plans to enforce noise level standards by redefining what is deemed "feasible" for employers to do in their workplace using engineering controls, unless an employer can show the effort is not feasible (i.e. will "put them out of business".) OSHA's proposal would alter a long-running and effective policy that allows employers to use administrative controls (limit exposure times) and provide "personal protective equipment," such as ear plugs and ear muffs, if they are more cost-effective than engineering controls. Such changes would need to be made by employers of all sizes, regardless of their costs. OSHA is pursuing this change outside the formal rulemaking process and, as such, and has not provided opportunity for input from the regulated community.

## **OSHA Injury and Illness Protection Program**

OSHA is also developing a new regulation that would mandate a standard for employers' Injury and Illness Prevention Programs (I2P2). The regulation is expected to be proposed in the spring of 2011 and would have sweeping ramifications on all aspects of both workplace safety enforcement and the promulgation of new regulations. ACA believes the efforts made by employers operating effective safety and health programs should not be disrupted by this new mandate.

## **Cleaning Product Claims Policy under FIFRA at EPA,**

ACA continues to explore its options and coordinate activities with other industry trade associations with an interest in amending the EPA new guidance on cleaning product labels. The new agency guidance changes longstanding practice that allowed cleaning products to make label claims regarding **cleaning of mold and mildew stains**, instead requiring that cleaning products making such claims be registered as pesticides under the Federal Insecticide Fungicide and Rodenticide Act (FIFRA). This has the potential to affect companies that manufacture or distribute cleaning products required for surface preparation prior to the application of new finishes. FIFRA registration of a pesticide product is a detailed and costly regulatory requirement that requires specialized knowledge and expertise, and failure to conform properly carries significant penalties. This change in "agency guidance" can result in significant adverse impacts to industries relying on longstanding practices.

## **TSCA Inventory Update Rule**

On August 16, 2010 EPA issued a Notice of Proposed Rulemaking (NPR) to amend the current Inventory Update Rule (IUR) which serves to direct the collection of information on chemical manufacturing, import, and processing activities in the US. The proposed rule is a dramatic departure from current practice as it expands the scope of the rule, requiring additional information on an increasingly broad array of chemical manufacturing activities, but also will

compel more affirmative efforts on the part of raw material (chemical) suppliers to secure information from their customers on their use chemicals. This latter activity would move forward without the opportunity, as the current regulation provides, for claims of confidential business information (CBI). ACA has commented on the proposal, seeking to re-establish longstanding practice in this area.

Once again, we thank you for the opportunity to provide our input and we look forward to a continued dialogue with you and your committee about these important regulatory policy matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Andrew Doyle', with a stylized flourish at the end.

J. Andrew Doyle  
President and CEO



## American Coke and Coal Chemicals Institute

1140 Connecticut Ave. N.W. - Suite 705 • Washington, DC 20036  
202-452-7198 • Fax 202-463-6573 • Website: [www.accci.org](http://www.accci.org)

January 10, 2011

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

Submitted electronically to [sharon.utz@mail.house.gov](mailto:sharon.utz@mail.house.gov)

Dear Chairman Issa:

On behalf of the American Coke and Coal Chemicals Institute (ACCCI), I am pleased to respond to your inquiry regarding existing and proposed regulations that negatively impact the economy and jobs. ACCCI represents 100% of the producers of the nation's metallurgical coke, including integrated steel companies and independent producers, and 100% of the nation's producers of coal chemicals derived from byproducts of cokemaking. Our producer members operate facilities in 12 states. Coke is an essential raw material for the production of iron and steel, and ACCCI fully supports the response to your inquiry by the American Iron and Steel Institute.

Both the U.S. Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) have recently promulgated or proposed or have pending numerous regulations that will have a negative impact on the ability of coke producers to operate cost-effectively and supply needed raw materials to allow the iron and steel industry to remain competitive in the international marketplace. We appreciate the opportunity to provide a few details below on some of the more salient regulations of concern.

### EPA

In recent months, EPA has undertaken an unprecedented regulatory agenda by promulgating or proposing a host of rules in the areas of air, water, solid waste, greenhouse gases, and toxic chemicals, and ACCCI has filed comments and taken other actions to demonstrate the adverse effects of those regulatory initiatives on our members. In a nutshell, these new regulations will create permitting obstacles to expand and modernize our facilities and will impose significant additional costs that are difficult to recoup in the face of intense international competition. Examples follow.

### Greenhouse Gas (GHG) Regulations

Effective this month, under its perceived Clean Air Act authority, EPA will begin regulating GHG emissions from large emitters, which will impact most coke producers. The requirements are largely undefined by guidance issued by EPA in December and are subject to decisions by individual permitting authorities, but the uncertainty of implementation raises significant industry concerns with the potential for permitting delays and the prospect of

significant added costs of operation. The technical support document for the iron and steel (and cokemaking) industry failed to reflect the current status of technologies employed. Carbon is a necessary raw material for production of iron and steel, and coke is the dominant source of that carbon. Regulation of carbon through GHG regulations applicable to domestic producers when no comparable regulations apply to foreign producers will have an adverse effect on the ability of U.S. companies to remain competitive.

### Boiler MACT Regulations

The regulations proposed by EPA for Maximum Achievable Control Technology (MACT) for existing and new boilers and process heaters and scheduled for finalization in the near future (subject to an extension request to the Court) would not only have an inordinate cost impact on the industry but would have perverse and unintended environmental and energy consequences. Coke oven gas is a valuable byproduct of coke production and is a valuable fuel that takes the place of other fuel requirements in coke plants and integrated steel plants, typically in coke oven gas-fired boilers. There are approximately 75 coke oven gas-fired boilers in the U.S. EPA has proposed emission limits for coke oven gas-fired boilers that have not been demonstrated in the record to be achievable, even if control equipment with annualized costs of approximately \$600 million, by EPA's own estimates, are installed. Given these costs and compliance uncertainties, companies would likely opt to flare the coke oven gas and substitute natural gas (at an estimated annualized cost of approximately \$300 million) on these units to meet the rule's proposed requirements for natural gas-fired units. The result would be increased emissions of GHGs and hazardous air pollutants from flaring the coke oven gas and the wasteful depletion of natural gas that could be used elsewhere. ACCCI has called on EPA to re-propose the boiler rule to acknowledge and reflect the environmentally beneficial and energy-conserving use of process gases, and we support the agency's request to the Court for such an extension.

### National Ambient Air Quality Standards

EPA is in various stages of reviewing and proposing revisions to ambient air quality standards for criteria pollutants. New one-hour standards have been promulgated for nitrogen dioxide and sulfur dioxide. In the latter case, EPA has adopted a new approach for designating nonattainment areas by relying on modeling instead of monitoring, which appears to be inconsistent with language in the Clean Air Act and is being litigated. In addition, the one-hour standards make permitting of new or modified combustion sources exceedingly difficult because of the conservative, worst-case conditions that are built into the models. EPA is also slated to propose a more stringent ozone standard in the near future. The tighter standard will make almost the entire country nonattainment and require states to develop implementation plans that will impose even tighter restrictions for nitrogen oxides, which are precursors for ozone. The agency also is considering tighter ambient standards for fine particulate matter (which will mean more stringent controls for fine particle precursors, *i.e.*, sulfur and nitrogen oxides) and carbon monoxide. These increasingly more stringent ambient standards will impact a wide variety of existing industry combustion sources and create permitting obstacles for applying new technology. For example, these new regulations and the threat of impending regulations caused one member company to delay a new \$700 million coke plant with over 120 new jobs and an annual payroll, including benefits, of \$8 million.

### Proposed Listing of Hydrogen Sulfide (H<sub>2</sub>S) as a Hazardous Air Pollutant

In the 1990s, EPA proposed adding H<sub>2</sub>S to the list of chemicals requiring reporting under the Toxic Release Inventory, but the action was stayed in response to industry's demands that more scientific investigation was needed into the health effects of the substance. Recently, however, EPA proposed lifting the stay despite having not developed any additional scientific support for the listing. This is of concern to ACCCI because of the presence of H<sub>2</sub>S in coke oven gas and would be an unnecessary and unjustified additional administrative burden for the industry.

### TSCA Test Rule for Coal Tar and Coal Tar-Derived Chemicals

Under authority of the Toxic Substances Control Act (TSCA) EPA can demand testing of human and ecological effects of chemicals in situations where the agency believes exposure of a chemical is substantial and there is insufficient health or ecological data to assess risks. EPA has proposed such testing for coal tar, a byproduct of cokemaking, and five other chemicals derived from coal tar and processed by tar refiners. The extent of required testing amounts to several million dollars that would have to be borne by coke and coal chemicals companies. ACCCI has submitted extensive comments demonstrating that these chemicals have minimal exposure potential that does not justify testing under terms of TSCA, and, moreover, that existing scientific data on the health effects of these chemicals are sufficient to identify risks without imposing additional costly testing. Final action by EPA is pending.

### Conductivity (Total Dissolved Solids) Water Quality Standards

EPA has proposed exceedingly stringent conductivity standards (a measure of total dissolved solids) for streams in the Appalachian region, ostensibly targeting coal mining operations. However, this action, apart from impacting the coal industry, on which the coke industry depends for its basic raw material, has the potential for broader adoption on a national scale. This would impose unrealistic dissolved solids limits, in some cases tighter than natural levels, and force the installation of expensive control systems for a wide variety of industry installations, including cokemaking operations. Some states are beginning to adopt stringent total dissolved standards in anticipation of EPA regulation.

### U.S. Geological Service (USGS)

One of the products produced from coal tar, a cokemaking byproduct, is a refined tar product used in the formulation of emulsions that are used as pavement sealants, which are periodically applied to prolong the life of asphalt driveways and parking lots. Over the past few years, employees of the USGS have been conducting studies and publishing papers implicating refined tar pavement sealants as a major source of polynuclear aromatic hydrocarbons (PAHs) in the environment, despite evidence that PAHs are ubiquitous in the environment and have many sources attributed to societal activities generally. Other studies show sealants to be but a minor source of PAHs, but the USGS has identified the sealants to be the dominant source. Because PAHs have been identified as hazardous to health and aquatic life, the USGS has assumed an advocacy role in promoting bans of refined tar pavement sealants, and in response to USGS

claims several communities have taken actions to restrict or outright ban the use of such sealants. These actions have serious implications for our industry's marketing of these sealants and threaten the economic viability and jobs of hundreds of small businesses that distribute and apply sealants. ACCCI believes that the USGS plays a valuable role in identifying threats to waters of the U.S. but that it oversteps its predominantly scientific and monitoring role by advocating regulation, much less bans, of products. This issue has not been addressed by the EPA, which is the proper regulatory agency to deal with these concerns. We believe oversight investigations into the USGS's actions in this matter are in order.

## OSHA

ACCCI acknowledges that it is the policy of the federal government to ensure safe and healthy workplaces and that OSHA is the agency to implement this policy. The coke and coal chemical industry places the highest priority on the very same goal and has made monumental strides in improving workplace safety in our industry. However, OSHA has recently proposed a number of regulatory changes that we believe overreach and have the potential for significant economic consequences for industry.

### Noise Policy Reinterpretation

OSHA has proposed to adopt a revised enforcement policy that will require the installation of "feasible" engineering or administrative controls before accepting the use of personal protective equipment to limit the effects of noise in the workplace. The new policy reverses decades of agency precedent and policy that recognized the cost-effectiveness of personal protective equipment for hearing protection by defining "feasible" as "capable of being done without threatening the viability of the company." This unreasonable shift in emphasis stands to add substantial costs in terms of engineering controls or decreased productivity by virtue of administrative controls and threatens the global competitiveness of our industry and the industries we supply.

### Recording of Musculoskeletal Disorders

OSHA has proposed the addition of musculoskeletal disorder injuries to its requirements for reporting of other injuries and illnesses. We are concerned that this new reporting requirement is a predicate for using OSHA's general duty clause to cite violations in lieu of a national ergonomics standard, which contravenes the Congressional overturning of that standard under terms of the Congressional Review Act in 2001.

---

Thank you for the opportunity to provide the coke and coal chemicals industry's input to your critical review of regulations that may affect the economy and jobs. We have touched on just a few of the more pressing regulatory issues with significant impacts, but there are many more. We heartily support your comprehensive oversight and review of the government's environmental and safety and health regulations. While protection of the environment and

workplace safety are of great importance, it is also essential that both costs and benefits of regulations be cautiously evaluated and considered.

Sincerely,

A handwritten signature in cursive script, appearing to read "B.A. Steiner".

Bruce A. Steiner  
President





January 11, 2011

**Kenneth I. Chenault**  
Chairman and Chief Executive Officer

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

**American Express Company**  
200 Vesey Street  
New York, NY 10285  
Tel: 212.640.6023  
Fax: 212.640.0128

Dear Chairman Issa:

Thank you for your letter of January 6 asking for our assistance in identifying regulations that have undermined job creation. As we look for ways to accelerate economic growth, regulatory reform can play a key role in making our economy more efficient and dynamic.

As a Vice Chairman of the Business Roundtable, I have worked with other CEO's over the last two years to identify regulations across different sectors of the economy that are having a negative impact on competitiveness and job creation. That work led to a submission to OMB Director Peter Orszag last June by the Business Roundtable that identified dozens of regulations in need of reform, the collective impact of which is enormous. The letter is at:

[http://businessroundtable.org/uploads/hearings-letters/downloads/20100621\\_Letter\\_to\\_OMB\\_Director\\_Orszag\\_from\\_BRT\\_and\\_BC\\_with\\_Attachments.pdf](http://businessroundtable.org/uploads/hearings-letters/downloads/20100621_Letter_to_OMB_Director_Orszag_from_BRT_and_BC_with_Attachments.pdf).

More recently, the Business Roundtable released a policy position on existing and proposed regulations that focused particularly on environmental regulation, financial reform, and health care and retirement benefits. In financial services alone, we expect over 200 new regulations to be promulgated as a result of the Dodd-Frank Act. The impact, of course, will go far beyond financial services firms to the industrial users of derivatives and to small businesses that need reliable credit to survive and expand. I am enclosing a copy of the Roundtable's paper.

Thank you for your attention to this important issue. If you have any further questions, please feel free to contact Arne Christenson, who is Senior Vice President for Government Affairs at American Express, at 202-434-0160.

Sincerely,

A handwritten signature in black ink, appearing to be 'Arne Christenson', written in a cursive style.

Enclosure



## **Business Roundtable Policy Positions on Existing and Proposed Regulations**

### **Environmental Regulations**

The Environmental Protection Agency has unveiled an aggressive Clean Air Act and Clean Water Act regulatory agenda that, cumulatively, threatens a significant number of electric power plants and industrial boilers. Most of these regulations are scheduled to be finalized over the next two years.

**NESHAPS for Utility Boilers:** Section 112 of the Clean Air Act (CAA) requires EPA to establish National Emissions Standards for Hazardous Air Pollutants (NESHAPS) for major (and area) sources of hazardous air pollutants (HAPS) that are subject to regulation. Pursuant to a consent decree approved by the U.S. District Court for the District of Columbia, EPA is required to issue a proposed rule for the regulation of HAPS emissions from coal and oil-fired utility boilers by March 16, 2011, and to finalize the rule by November 16, 2011. It is anticipated that any final rule will require the installation of costly new control equipment at virtually every existing coal-fired utility boiler. In addition, it is not clear if technology is available to meet the anticipated standards if EPA does not use its authority to sub-categorize or tailor its regulations depending on coal types. Regardless of the final form of the rule, it is anticipated that significant coal generating capacity will be at risk for closure as a consequence of the rule.

**NESHAPS for Industrial, Commercial and Institutional Boilers:** In two separate rulemaking proceedings, EPA proposed rules in April 2010 that would reduce HAPS emissions from existing and new industrial, commercial and institutional boilers and process heaters located at major sources and reduce HAPS emissions from existing and new industrial, commercial and institutional boilers located at area sources. On December 7, 2010, EPA petitioned the federal court for an extension of the deadline for issuance of a final rule to April 13, 2012. EPA argued that it needed additional time to review over 4800 public comments filed in the rulemaking proceedings. In addition, EPA indicated that the final rules would reflect material changes from the proposed rules. According to an EPA Fact Sheet on the NOPR for major sources, there are approximately 13,555 boiler and process heaters at major sources in the U.S. The Fact Sheet estimates that the total national capital cost for a final major source rule would be approximately \$9.5 billion in 2012, and the total national annual cost would be \$2.9 billion in 2013. EPA also estimated that for area sources, there are approximately 183,000 boilers at 92,000 facilities. Most of these area sources are owned and operated by small entities. EPA estimates that the total national capital cost for a final area source rule would be approximately \$2.5 billion, and the total national annual cost would be \$1.0 billion.

Given the number of industrial sources affected and the potential severity of the final rule, this proposed regulation could be extremely costly and disruptive. Moreover, a number of older facilities could be expected to close given the magnitude of the capital and annual operating costs anticipated. Permitting the number of upgrades that will be required under these regulations will present a significant challenge.

**Regulation of Greenhouse Gas Emissions Under the Clean Air Act:** The EPA has finalized regulations under the Clean Air Act requiring major sources of greenhouse gas (GHG) emissions to be subject to the prevention of significant deterioration (PSD) and permit programs of the Clean Air Act. On December 23<sup>rd</sup>, 2010, EPA also indicated that it intended to promulgate New Source Performance Standard (NSPS) regulations for major sources. In general, the PSD program requires sources to apply the best available control technology (BACT) to limit emissions of air pollutants, determined on a case-by-case basis, and the NSPS program establishes a "floor" on what this technology can be. At this time, there is no readily available commercial technology to limit GHG emissions. On November 10, 2010, EPA issued BACT guidance for the states to implement. In general, this guidance calls for a reliance on efficiency measures, rather than fuel switching or entirely new, unproven technology to control GHG emissions. EPA has made it clear, however, that through subsequent rulemakings, the universe of affected facilities is likely to expand, thus subjecting more and more facilities to new case-by-case regulatory reviews. EPA is being challenged in court on every significant decision involving this program.

The Clean Air Act was not designed and is ill-suited to regulate a ubiquitous pollutant like CO<sub>2</sub>. CO<sub>2</sub> emissions do not pose a local or even national problem; whatever impact there may be is global. EPA's current regulations require potentially lengthy BACT case-by-case reviews for new facilities or major modifications of existing facilities, thus further delaying investment in new manufacturing plants. In addition, EPA has made it clear that its current regulations are just the first step in what will be a series of further rulemakings potentially expanding the scope, severity and cost of the program.

**Cooling Water Intake Structures:** The withdrawal of cooling water from rivers, lakes or oceans by electric power plants or manufacturing facilities may result in adverse environmental impacts on aquatic life. These impacts may be greater at facilities with open-loop, or once-through, cooling water systems, which withdraw water from a source, use it to cool and then discharge it back into the source. Other facilities use closed-loop cooling water systems, in which cooling water is itself cooled, e.g., in cooling towers, and then recycled for further cooling purposes. Approximately 43% of electric power plants in the U.S. with cooling water systems use an open-loop system. On December 3, 2010, the District Court for the Southern District of New York approved a settlement agreement which requires EPA to issue a Notice of Proposed Rulemaking under the Clean Water Act for existing facilities by March 14, 2011. It also requires EPA to issue final rules by July 27, 2012. If final rules in the rulemaking proceeding require electric power plants and manufacturing facilities with open-loop, or once-through, cooling systems to install closed-loop cooling systems, then the potential retrofit costs could be substantial. The massive cost of retrofits could cause the

premature retirement of power plants. The North American Electric Reliability Corporation recently estimated that the costs of rules could cause 32,500-36,000 MW of capacity to be vulnerable to retirement if EPA requires the conversion of open-loop cooling water systems to closed-loop systems. The premature retirement of that capacity would have implications for the reliability of the electric power grid. Finally, some power plants may simply not have the space required for the installation of cooling towers and other associated equipment.

**Revised National Ambient Air Quality Standard for Ozone:** Under section 109 of the Clean Air Act, EPA is required to issue national ambient air quality standards (NAAQS) for six air pollutants: ozone, particulate matter, NOX, CO, sulfur dioxide and lead. EPA is required to issue both primary and secondary standards. Primary standards are requisite to protect the public health with an adequate margin of safety. Secondary standards are requisite to protect the public welfare from any known or anticipated adverse effects of the pollutants. On March 27, 2008, EPA, under the Bush Administration, finalized primary and secondary NAAQS for ozone. EPA established a new primary NAAQS for ozone of 0.075 parts-per-million (ppm) using an eight-hour diurnal averaging time. This standard was at variance with the recommendations of the Clean Air Act Advisory Committee for a standard of 0.060-0.070 ppm. These NAAQS were appealed to the U.S. Court of Appeals for the D.C. Circuit. When the Obama Administration assumed office, EPA requested that the D.C. Circuit hold the appeal in abeyance with EPA officials appointed by the Obama Administration reviewed the 2008 standards. In September 2009, EPA advised the D.C. Circuit that it would reconsider the 2008 NAAQS for ozone and would propose revised standards. On January 6, 2010, EPA proposed to revise the NAAQS for ground-level ozone to the level initially proposed by the Advisory Board. In November, 2010, EPA advised the D.C. Circuit that it would issue a final rule by December 31, 2010. On December 8, 2010, EPA requested a continued abeyance from the D.C. Circuit, indicating that it intends to issue a final rule by July 29, 2011. Compliance with the proposed NAAQS for ozone, if finalized, is expected to pose considerable challenges. According to EPA, 253 of the 675 counties in the U.S. with ozone monitoring equipment have not yet achieved compliance with the NAAQS for ozone issued in 1997. One half of the counties will be nonattainment areas under the standard of 0.075 ppm issued in 2008 and over 80% of the counties could be in nonattainment under the standard of 0.060 proposed last January. Nonattainment status requires reasonable further progress toward meeting the standards, which makes permitting new sources of ozone pollution virtually impossible unless offsets or other reductions are found and the lowest achievable emissions rate for a proposed facility is achieved.

## **Financial Regulatory Reform**

There are a number of provisions stemming from the Dodd/Frank Financial Regulatory Reform legislation that are unnecessary, do not constitute "reform" in any recognizable sense, and are burdensome and costly. Below are examples of regulations stemming from the Dodd/Frank legislation that have negative consequence to the economy and jobs.

**Proxy Access:** The SEC has created a new federal right to proxy access. This undermines decades of state law, precedent and organic evolution of corporate law. The rules will result in short term focus by boards of directors, turn director elections into political contests, and could have serious consequences for economic growth and job creation. The BRT and the Chamber of Commerce have sued the SEC to vacate the rules and the issue is pending in the courts.

**CEO Pay Ratio Disclosure:** Section 953(b) of Dodd/Frank requires disclosure of the ratio of CEO compensation to the median of the compensation of all the company's employees. The statute sets forth a very specific calculation and, as such, it is a very difficult and expensive undertaking. It could potentially cause companies to take actions that result in less employment, such as outsourcing, to produce better ratios. Less specificity in the calculation is necessary.

**Disclosure of Conflict Minerals:** Section 1502 relating to conflict minerals will require any company that uses one of a number of commonly used minerals in the production of not only its products, but also potentially those it has contracted to manufacture, to conduct an inquiry to determine if the minerals came from the Congo, and if it cannot determine that they did not, to engage in a costly due diligence procedure, including an audit.

**Reporting of Payments:** Section 1504 requires resource extraction issuers to report payments to foreign governments, including taxes, royalties, fees and other material benefits. Such information will be competitively sensitive in many cases and its public disclosure may violate the laws of foreign countries.

Neither Section 1502 or 1504, as well Section 1503 relating to disclosure of mine safety violations to the SEC, have anything to do with the protection of investors. They are costly requirements that have been attached to the federal securities laws to address unrelated concerns. The SEC has no expertise to regulate in this area.

**Other corporate governance provisions:** Other sections of Dodd-Frank relating to executive compensation, including the advisory vote on compensation (Section 951) and mandatory stringent clawbacks (Section 954), will interfere with the ability of boards of directors to hire, retain and motivate the most qualified senior management teams to produce growth and jobs.

**Whistleblower bounty:** Pursuant to Section 922, the SEC has proposed rules which provide a substantial financial bounty to company employees who go directly to the SEC and report violations of the securities laws. These rules would circumvent and render ineffective company whistleblower and compliance programs and deprive companies of the ability to promptly address improper activities by their employees.

**Derivatives Regulation:** It is critical that end users of derivatives -- companies that employ derivatives to manage risk, not create it through speculative trading -- should have a clear

exemption from margin, capital, and clearing requirements imposed by the Dodd-Frank Act. We urge the Committee to focus on the dozens of regulations that have been or will be proposed to implement the Act's derivatives title (Title VII), which will unnecessarily burden end-user companies. There are a number of regulations, including proposals imposing margin, capital, and clearing requirements and defining the terms "major swap participant" and "swap dealer", which could cause end-user companies to be subject to bank-like derivatives regulation, when increased transparency combined with regulation of true swap dealers would address any systemic risks caused by derivatives use.

When considering the need for and effects of derivatives regulation on end-users, it is important to bear in mind the following:

- End-users account for approximately 10% of derivatives use and largely do not invest in derivatives to speculate for profit.
- A BRT study shows that a 3% margin requirement could result in the loss of 100,000 jobs and tie up an average of \$269 million per year per company. These results are conservative as they reflect only the imposition of an "initial" margin requirement, though "variation" margin charges could be much higher, tying up more capital and costing more jobs.

## **Health Care and Retirement Benefits**

The following are key regulatory issues that have been raised by Business Roundtable member companies in the area of health and retirement benefits.

**ERISA Preemption:** It is critically important that ERISA preemption be preserved in health care reform regulations under the Patient Protection and Affordable Care Act (PPACA). One of the key features of ERISA is the ability of an employer to design a plan to fit the profile/needs of its workforce. The imposition of employer mandates inhibits an employer's ability to do this and will likely result in cost increases for large, self-funded plans without commensurate benefits to employees.

**"Grandfathering":** These rules from the PPACA were too cumbersome and didn't allow plans to comply with "the early requirements over a period of time."

**"Cadillac Plan" Tax:** This new tax in the PPACA will divert resources away from investment in new technology, processes and jobs, and will significantly raise costs, harming global competitiveness. As a result of efforts to avoid the tax, one of the revenue sources that supports health reform will be significantly reduced.

**Health IT:** The CMS Notice of Proposed Rulemaking (NPRM) and the Interim Final Rule (IFR) are creating uncertainty and confusion, jeopardizing the goal of the rapid adoption of electronic health records. Without policy changes, innovation will be marginalized and job creation threatened.

**RDS:** Due to the elimination of the tax-free aspect of Retiree Drug Subsidy (RDS) in the PPACA, employers may be more likely to drop retirees into the open market, where costs to the Federal government (i.e., under Part D of Medicare), could exceed those to the Federal government under RDS.

**Limited Plans:** PPACA provides the Secretary transitional authority to allow benefit limits up until 2014. We support the "mini-med waiver authority" to allow employers to continue to offer limited benefit plans – to current categories of employees – until 2014 to ensure continued affordable coverage of part-time, seasonal, temporary and full-time employees in a waiting period; and vital services such as maternity coverage – a benefit that is generally not available in the individual market. We believe this waiver authority should be extended beyond 2014.

**Medical Loss Ratio (MLR) Requirements:** Careful consideration should be given to these requirements. They may:

- Increase premiums,
- Reduce competition in the marketplace, and
- Narrow provider choice for consumers.

**Premium Increase Reporting:** A new federal rate review regime would:

- Threaten carrier solvency leaving consumers and providers with unpaid claims,
- Decrease competition,
- Decrease choice of providers, and
- Add unnecessary administrative burden.

**Administration and Reporting:**

- The Health Care Reform bill includes a provision that requires more companies to file 1099 tax forms; the cost to modify systems to collect the data and send the additional 1099s will be significant.
- The short amount of time in which plans are required to comply with new ICD10 and 5010 coding requirements imposes an incredible administrative burden that will increase administrative costs significantly.

**Retirement Policy Regulations:**

- Proposed PBGC regulations under ERISA section 4062(e) would hinder normal business transactions in ways that are not supported by the language or intent of the statute. The rules were intended to apply only when an employer ceases operations at a facility,



but the proposed regulations would apply in many cases where no operations were shut down and would expose plan sponsors to potential liability that is disproportionate to the size of a transaction. By placing a significant toll charge on customary and economic business transactions, employers will be limited in their flexibility to redirect capital and efforts into job formation.

- Regulations governing cash balance and other hybrid pension plans, including interpretations of market rate of return standards and conversion requirements, are requiring unnecessary expenditures by employers and are disrupting pension benefit plans, adding costs and diverting resources from job creation.
- Ongoing regulatory projects with respect to pension plan funding should seek to minimize year-to-year volatility and maximize the employer's ability to predict costs. Without appropriate smoothing of asset values and interest rate swings, volatile funding requirements will intensify the cyclical nature of the U.S. economy -- forcing employers to make larger contributions when the economy is at its weakest. This, in turn, would deepen recessions and slow job growth. In contrast, more predictable, steady funding rules provide employers with the certainty they need to hire new employees and to make capital investments.



## American Hardware Manufacturers Association

January 7, 2011

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

Dear Congressman Issa:

In response to your letter of December 29, 2010 asking for assistance in identifying existing and proposed legislation that have negatively impacted job growth in our industry, the American Hardware Manufacturers Association (AHMA) did a mailing requesting feedback from our Board of Directors and Officers plus a separate mailing to approximately 350 top level executives in our member companies.

Based on responses received to date, the top concerns are:

- The Health Care Act: Too costly and cumbersome to comply with.
- Taxes, both personal and corporate: Too high and anti-business in terms of global competitiveness.
- Cap & Trade legislation / regulations: Make it more costly to produce products due to increased energy prices.
- EPA / VOC-related legislation / regulations: Most new regulations are too costly for smaller manufacturers to comply with and remain competitive.

Congressman Issa, we appreciate your efforts as Chairman of the Committee on Oversight and Government Reform to help America return to an economy that is free to grow and create jobs without unnecessarily burdensome government interference in terms of anti-business laws and regulations.

Thank you for the opportunity to provide you with our views on these very important matters. If we can be of any assistance in the future, please do not hesitate to contact us as we are eager to help move the country forward to a more prosperous era.

Sincerely,

Timothy S. Farrell  
President and Chief Executive Officer

Attachment: About the American Hardware Manufacturers Association (AHMA)

**About the American Hardware Manufacturers Association (AHMA)**

AHMA is a globally focused trade association of manufacturers, or providers, of hardware, home improvement, lawn and garden, paint and decorating, building and construction and related products, as well as manufacturers' representative's agencies and trade publications.

AHMA offers many valuable member and industry programs, services and activities including the AHMA Hardlines Technology Forum, AHMA / USA International Pavilions, AHMA Advantage GPO, the AHMA eAGLE, The Hard Fax: Home Improvement Industry News, The Hard Fax International: Home Improvement Industry News from Around the World, the AHMA Home Improvement Industry Confidence Index, the AHMA Home Improvement Industry Dashboard, Government Relations Programs, Member Benefit Vendor Programs, the AHMA Hardware Industry Relief Effort (HIRE) and the AHMA / Habitat for Humanity Partnership.

For more information about AHMA, please visit [www.ahma.org](http://www.ahma.org).



10 January 2011

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

Chairman Issa:

317 W. High Ave., 10<sup>th</sup> Floor  
P.O. Box HP-7  
High Point, NC 27261  
Phone 336.884.5000  
Fax 336-884-5303

I am writing today in response to your letter dated December 29, 2010 requesting that the American Home Furnishings Alliance (the AHFA) identify existing and proposed regulations that have negatively impacted job growth within our membership. Please find enclosed a brief summary of two regulatory initiatives the industry is facing that underscore the overreach of regulators and highlights the downward pressure the regulatory burden is having on job growth.

The American Home Furnishings Alliance (AHFA) is the world's most influential trade organization serving the home furnishings industry. The 372<sup>1</sup> member companies operate 5,384 domestic wood furniture and upholstery manufacturing facilities and comprise an extensive global supply chain that provides a wide variety of home furnishings to the US consumer. Member companies provide approximately 300,000 manufacturing jobs<sup>2</sup> throughout the US and represent a \$35 billion dollar segment of the nation's economy.

**Emissions Standards for Major Source Industrial/Commercial and Industrial Boilers and Process Heaters (Boiler MACT)**

The AHFA is deeply troubled by the potential economic effects on the domestic furniture manufacturing industry of the proposed Emissions Standards for Major Source Industrial/Commercial, and Institutional Boilers and Process Heaters, (the "Boiler Rule") and the Identification of Non-Hazardous Materials That Are Solid Waste (the "Waste Rule"). As proposed, these two rules threaten to eliminate the long-standing and environmentally beneficial practice whereby furniture companies generate heat and process steam at their plants by combusting wood fuel generated from the furniture manufacturing process. The proposed rules are of great concern to those of us who represent furniture manufacturers and the employees of those companies.

Unless altered, the rules could actually have the perverse environmental effect of forcing the transition of furniture manufacturing

---

<sup>1</sup> 220 manufacturing and 152 supplier members

<sup>2</sup> Estimated \$4.4B payroll

facilities from the use of wood 'biomass' as a fuel to the combustion of fossil fuels while simultaneously forcing the disposal into landfills of a clean, high BTU value, renewable fuel in the form of wood 'biomass' generated from the furniture manufacturing process.

One of our major concerns with the proposals is the effect of the rules on wood-fired boilers commonly used by the furniture industry. Under current practice, boilers in the furniture industry are typically small and combust a kiln-dried wood fuel which is generated during the furniture manufacturing process. This wood 'biomass' fuel is very dry, burns cleanly, has a neutral CO<sub>2</sub> emissions scoring, and has a high heat value. However, as we understand it, the Boiler Rule as proposed would combine these smaller dry wood 'biomass' fuel boilers used in the furniture industry into a broader biomass subcategory, that includes boilers fired by wet fuel used in other industries, thereby creating a single subcategory of emission sources for evaluation. By establishing a single large group of boilers that use both dry wood fuel and wet wood fuel, EPA effectively ignores the benefits and unique characteristics of dry wood boilers by imposing a single set of emissions standards on the entire category.

Larger boilers burning wet biomass fuels have historically required more costly controls as a result of their inherently higher emissions. The cost for small dry-fuel boilers to meet standards that have historically applied to wet biomass boilers is prohibitive, and the incremental air quality benefit that would come from lumping dry fueled boilers into such a category is negligible. The estimated cost associated with these 'end of pipe' controls for a typical wood fired boiler in the furniture industry is estimated to be \$3.3M per stack<sup>3</sup>. In fact, rather than make costly investments in new 'end of pipe' controls, a more likely outcome is that furniture manufacturers would retire their wood-fired boilers, replace them with natural gas or fuel oil boilers, and simply dispose of the dry wood fuel generated by the furniture manufacturing process. A greenhouse gas neutral fuel would be replaced with a fuel that emits substantial amounts of greenhouse gases. Cost associated for a typical boiler at a furniture facility<sup>4</sup> to 'fuels switch' is estimated to be \$1.8M and includes the cost to landfill the ready available dry, high BTU, carbon neutral fuel<sup>5</sup> and find the equivalent BTU value in natural gas, if it is available. This predictable outcome would not be consistent with the intent of the rule.<sup>6</sup> To prevent this likely outcome from occurring, we request that EPA revisit the proposal and establish a distinct low moisture (less than or equal to 30 percent) biomass subcategory for dry wood fuel. Having a subcategory which considers the

---

<sup>3</sup> Estimate includes \$1.3M for an ESP (particulate) and \$2.3M for CO controls

<sup>4</sup> A 40-45 mBTU wood fired boiler

<sup>5</sup> Fuels switching to the BTU equivalent for natural gas in this typical boiler would increase CO<sub>2</sub> emissions by 23,000 T

<sup>6</sup> EPA has stated in their GHG/BACT guidance to State regulators, 'that based on these considerations, permitting authorities might determine that, with respect to the biomass component of a facility's fuel stream, certain types of biomass by themselves are BACT for GHG. (<http://www.epa.gov/regulations/guidance/byoffice-oar.html>)

unique characteristics of these boilers and the heat content of dry wood fuel<sup>7</sup> would enable a far more desirable economic and environmental outcome.

We are also concerned with the exclusion of the Health Based Compliance Alternative (HBCA) from the proposed Boiler Rule. Section 112(d)(4) of the Clean Air Act establishes a mechanism for EPA to exclude facilities from certain pollution control regulations in circumstances when those facilities can demonstrate that emissions do not pose a health risk. Using the discretionary authority allowed under Section 112(d)(4), EPA may allow facilities to demonstrate the potential risk posed by emissions of certain pollutants such as manganese and hydrogen chloride from the facility. If the facility can show that its emissions are below the established threshold for the levels posing a risk to human health, EPA can use these data to exclude from requirements sources from which emissions do not pose a risk. Using HBCA at the outset would allow facilities to comply based on health based data rather than taking the interim step of installing emissions control technology before determining if the facility meets the health based standard. We believe that use of the HBCA is a logical tool and that when a facility can meet a more stringent health based standard without the necessity of expensive emissions control equipment, the HBCA should be allowed. We ask that EPA reinstate the HBCA as part of the Boiler Rule.

#### **Identification of Non-Hazardous Materials That Are Solid Waste (the "Waste Rule")**

Finally, with regard to the related Waste Rule identifying non-hazardous secondary materials that are solid wastes, we applaud EPA for the inclusion of fuel generated from engineered wood products in the classification of dry wood fuel generated at furniture plants as "fuel" rather than "waste." This distinction allows these materials to be properly regulated under Section 112 of the Clean Air Act as a fuel burned in a combustion unit rather than being subject to the solid waste requirements as waste being incinerated under Section 129. Dry wood fuel is clearly a fuel and not a waste product, and we appreciate that EPA has structured its proposal in a manner which acknowledges this common sense fact. We understand that there is some component of engineered wood in all wood fuel generated at furniture plants today. The engineered wood component certainly should remain classified as "fuel" like the solid wood components of the fuel generated at furniture plants in the final Waste Rule. We believe that EPA's proposal on this point is well thought out, and we encourage you to retain this portion of the proposal.

Wood furniture manufacturing has experienced a recent downturn in the United States. Domestic employment in this industry has declined from

---

<sup>7</sup> AHFA, in collaboration with EPA, established a unique AP-42 emission factor for 'dry wood'... Table 1.6-1 'EMISSION FACTORS FOR PM FROM WOOD RESIDUE COMBUSTION'. (<http://www.epa.gov/ttnchie1/ap42/ch01/final/c01s06.pdf>)

620,000 jobs in 1990 to approximately 360,000 jobs today. There has been a 519% increase in wood casegoods furniture imports between 1998 and 2007. Between 2000 and 2008, 270 domestic furniture manufacturing operations have closed, including 112 plants in North Carolina, 31 in Virginia, and 30 in Mississippi. The industry cannot afford another factor which would place additional stress on these jobs. In this instance, EPA has the ability to achieve the environmental goals required by the Boiler MACT process while still preserving the economic viability of this vital domestic industry and the valuable American jobs it provides.

### **The Consumer Product Safety Improvement Act (CPSIA)**

Another critical regulatory initiative that adds to the regulatory burden and rapidly increasing 'cost of compliance'<sup>8</sup> is the Consumer Product Safety Improvement Act (CPSIA). It is critical that the House gives CPSIA its immediate attention. Our industry, as well as other industries, has been severely impacted by the unintended and unforeseen consequences of this legislation and relief is urgently needed to prevent further damage to our economy. Of particular interest to the furniture industry are **the definition of children's products, testing and labeling, and the public database**. Therefore, we would ask that you bring this subject to the attention of your colleagues and make the CPSIA one of the Committee's priorities for the 2011 term. We believe the sweeping scope of the CPSIA across all consumer products requires a more in-depth explanation of our unique product lines, manufacturing and quality control processes, to understand the impact of a "One Size Fits All" regulatory approach.

CPSIA is not the only major piece of legislation to affect furniture manufacturers. Newly enacted, promulgated and proposed rules from multiple points of State and Federal authority have created many challenges within our industry, and affected all in the US manufacturing industry. Furniture manufacturers have long been aware that our existence and success are directly linked to a single perspective: "Do we increase the comfort and satisfaction of our customers' lives?" Without question, the safety of our products is paramount to the comfort of our customers. It is with that intrinsic commitment to safety that we continue to seek clarity, reason and exemption where indicated, for our products. Regulation for regulations' sake, where there is no inherent change to a bill of materials, a process or a product indicated after extensive, statistically significant testing across multiple points of input and verification, is simply wasteful. Classifying products to include the broadest possible interpretation, rather than the most logical or appropriate, again creates waste, for those who must meet the requirements and then again for those who must enforce them.

---

<sup>8</sup> For every \$1B spent on upgrades and compliance cost, 16,000 jobs are at risk and US GDP is reduced by as much as \$1.2B ... economic impact study by IHS Global Insight for CIBO

Every enterprise comes with a price tag, including regulation. It is imperative if we as manufacturers wish to remain in business that we do nothing in the course of producing our goods that cannot be justified to a consumer as adding value to their purchase. The same rules should apply within the "production" of regulations. The cost of both meeting and enforcing the regulation MUST bring added value to the country and its citizens, who bear both costs, the first cost as an increase in purchase price and the second cost as a tax-supported government action.

It is within the context of the above that the industry sought greater clarity around some of the CPSC proposals to implement the CPSIA. Many of the proposed rules address things that the industry already does with respect to routine quality control, and we are pleased to bring these results forward. However, many others impose enormous additional costs without ANY additional safety benefits. It adds an additional layer of difficulty that all of this new regulatory activity has taken place during the worst economic recession in memory. For example, Furniture Brands International has only reported three profitable quarters in the last ten. In order to survive declining sales and the recession, they have significantly downsized and implemented deep cost cutting measures. There has been no price increase in three years and the company has withheld employee raises for the last four. It closed many of its domestic factories and consolidated its remaining manufacturing facilities. It cut production run quantities significantly to reduce inventories and eliminated over 3,000 US jobs during the past two years. In the past decade, most domestic furniture production has shifted off-shore. Hooker Furniture Corporation had five manufacturing facilities in Virginia and North Carolina seven years ago. Then economic conditions and the overburden of regulation forced them to 'off-shore' their production eliminating 1800+ jobs. Lea Industries had five manufacturing facilities in NC, TN, and VA with 1500+ employees five years ago. Today its domestic manufacturing is limited to one facility in Hudson, NC with 280 employees with the remaining production shifted offshore. Vaughan-Bassett Furniture had to "mothball" its Elkin, NC plant which at one time had over 450 employees. That left the company with one manufacturing plant in Galax, VA with 634 employees, and 50 employees in Elkin for support and warehousing operations. Finally, Thomasville Furniture, in 2005, employed approximately 10,000 people in 4 states. It had 10 case good production plants, 12 support plants, and 4 upholstery plants. In 2010, its employees had been reduced to 1,082 and its manufacturing operations reduced to 2.5 case good plants. The balance of production had also shifted off-shore. The stories of Furniture Brands, Hooker, Lea and Thomasville, while unique and highly personal to the employees, families and stockholders of these respected American brand names, is all too common in its 'core facts' throughout the furniture Industry.



## CONCLUSION

We hope that our discussion contributed to your understanding of the way in which the furniture industry markets its products to the American consumer. Its current quality control/assurance practices insure the safety of its products for consumers while providing a wide variety of choices at various price points for its customers. It is critical for this industry that the pending rules to implement CPSIA and the proposed boiler MACT remain sufficiently flexible to allow current practices to continue without forcing the loss of more U.S. jobs or forcing more furniture production overseas. The agencies should take a hard look at the cost benefit analysis of these rules because this industry is not finding any corresponding safety or health benefit, despite the huge costs required to demonstrate compliance. We would urge the Congress to restore some discretion to the CPSC and EPA in order to determine when testing, certification, fuels switch, controls are necessary in order to insure the safety of certain category of products and protect human health and the environment. Finally, we would like to offer our assistance to you, in the form of continued information flow, conversation, and/or outreach to the Committee in order to ensure the most pragmatic solutions are provided in your efforts to review the implementation of the boiler rule and the CPSIA. It is our desire that these issues are heard and acted upon by the broadest possible audience to impact meaningful change.

Thank your for the opportunity to provide these comments. Please contact me at your earliest convenience if you have questions or need additional information.

Regards,



Bill Perdue  
VP Regulatory Affairs  
[bperdue@ahfa.us](mailto:bperdue@ahfa.us)  
336.884.1017



**American Hospital  
Association**

Liberty Place, Suite 700  
328 Seventh Street, NW  
Washington, DC 20004-2802  
(202) 638-1100 Phone  
[www.aha.org](http://www.aha.org)

January 14, 2011

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

Dear Chairman Issa:

On behalf of the 5,000 members of the American Hospital Association (AHA), I am writing to thank you for the opportunity to identify existing and proposed regulations that have negatively impacted the hospital field. Regulatory relief is of great importance to our members and one of our major legislative priorities this year. We appreciate your invitation to share our views and concerns.

Hospitals are major employers and economic engines in communities across the country. In 2009, hospitals employed more than 5.3 million people, making hospitals the second-largest source of private-sector jobs. The goods and services hospitals purchase from other businesses create additional economic value. With these ripple effects included, hospitals support nearly one in nine U.S. jobs and more than \$2 trillion of economic activity. During the recent recession, hospitals remained a source of employment growth. In addition, between now and 2018, the Bureau of Labor Statistics projects that about 26 percent of all new jobs created in the U.S. economy will be in the health care and social assistance sector. This industry—which includes public and private hospitals, nursing and residential care facilities, and individual and family services—is expected to grow by 24 percent, or 4 million new jobs.

At the same time, hospitals are highly regulated at the federal level and, at times, those regulations place impediments in our members' paths as they continue to provide both jobs and health care to their communities. Below we suggest a number of areas where regulatory change could help our members achieve the dual objectives of better care for patients and job creation.



## CLINICAL INTEGRATION

Clinical integration is needed to facilitate the coordination of patient care across conditions, providers, settings and time in order to achieve care that is safe, timely, effective, efficient, equitable and patient-focused. At its heart, clinical integration is teamwork: hospitals, doctors, nurses and other caregivers working together to make sure patients get the right care, at the right time, in the right place. Hospitals are trying to spur this kind of teamwork, but regulatory barriers stand in the way. The barriers to clinical integration range from confusing antitrust policies to outdated rules governing relationships between hospitals, doctors and other caregivers. Even Internal Revenue Service (IRS) rules can be a barrier because they are applied by an agency largely removed from health care delivery and how it is evolving.

There are solutions. They range from creating user-friendly antitrust guidelines and safe harbors, to providing clear congressional direction on existing rules that promote instead of hinder clinical integration efforts. We have identified specific barriers and provided suggested solutions to the Administration:

**Antitrust Laws.** Recently, the antitrust agencies have become more receptive to clinical integration. However, instead of simply issuing guidelines to help caregivers better understand how the laws are applied, the Federal Trade Commission (FTC) has issued lengthy staff opinion letters that are expressly limited to the facts contained in the opinion letter and that warn that the “Commission is not bound by the staff opinion and reserves the right to rescind it at a later time.” The result is that caregivers can neither readily understand, nor completely rely on, those opinion letters. The solution is to issue user-friendly, officially backed guidance that clearly explains to caregivers what issues they must resolve to embark on a clinical integration program without violating antitrust laws.

**The Ethics in Patient Referrals Act (The Stark Law).** The Stark Law was originally enacted to bar a doctor from referring patients to a facility in which the doctor had a financial interest. However, the tight web of regulations and other prohibitions that have grown up around the law can now ban arrangements designed to encourage hospitals and doctors to team up to improve patient care in a clinical integration program. The law should be returned to its original focus by removing compensation arrangements from the definition of “financial relationships” that are subject to the Stark Law. These same compensation arrangements would still be regulated, but by other federal laws already on the books, such as anti-kickback and Civil Money Penalty laws, that are better equipped to do so.

**The Civil Money Penalty Law (CMP).** This law prohibits hospitals from rewarding physicians for reducing or withholding services to Medicare or Medicaid patients. The Department of Health and Human Services’ (HHS) Office of Inspector General (OIG), however, has taken the CMP law a step further, claiming that the law prohibits *any* incentive that affects a physician’s delivery of care. The result: a clinical integration program that, for example, rewards a doctor for following an evidence-based timetable

for the administration of beneficial drugs could be in violation of the law. The CMP law should be amended to make clear it applies only to the reduction or withholding of *medically necessary* services.

**The Anti-Kickback Law.** The law's main purpose is to protect patients and federal health programs from fraud and abuse. Today, the law has been stretched to cover any financial relationship between hospitals and doctors. Congress, recognizing that the anti-kickback statute sometimes thwarts good medical practices, periodically has created "safe harbors" to protect those practices. However, there is no safe harbor for clinical integration programs that reward physicians for improving quality. Congress should create a safe harbor to allow all types of hospitals to participate in clinical integration programs, establish core requirements to ensure the program's protection from anti-kickback charges, and allow flexibility in meeting those requirements so that the programs can achieve their health care goals.

**The IRS Code.** The majority of the nation's hospitals, as not-for-profit organizations, are exempt from federal income taxes. To maintain that not-for-profit status, these hospitals must abide by certain restrictions in the Internal Revenue Code, including one that addresses the payments they provide to physicians, nearly all of whom are not tax-exempt. The rules in question prevent a tax-exempt institution's assets from being used to benefit any private individual, including physicians.

The IRS should issue an Advisory Information Letter or a Revenue Ruling with guidance on payments from a tax-exempt hospital to physicians in clinical integration programs, ensuring that the payments do not violate private-benefit and inurement rules.

#### RECOVERY AUDIT CONTRACTORS

Recovery Audit Contractors (RACs) were authorized as a Medicare demonstration program under the *Medicare Modernization Act of 2003*, and made permanent by *Tax Relief and Health Care Act of 2006*. They are charged with identifying improper Medicare fee-for-service payments – both overpayments and underpayments. RACs are paid on a contingency fee basis, receiving a percentage of the improper payments they identify and collect. RACs were extended to the Medicaid program through 2010's *Patient Protection and Affordable Care Act*. The Medicare RAC demonstration program suffered from improper oversight by the Centers for Medicare & Medicaid Services (CMS) and resulted in overzealous claim denials. The fundamental flaws in the design and operation of the Medicare RAC demonstration program led to provider appeals, 64 percent of which were decided in favor of the provider ("CMS Update to the RAC Demonstration Report," June 2010). While CMS listened to provider concerns and made several important changes in the permanent RAC program, the permanent program's rollout was nevertheless beset by problems and delays. Most importantly, more than 50 percent of hospitals report a significant increase in administrative burden due to the RAC program, including employing additional compliance staff and consultants. Hospitals strive for

payment accuracy and are committed to working with CMS to ensure the validity of Medicaid payments; in fact, providers already work with multiple CMS contractors to identify inappropriate payments.

#### **ABUSE OF THE FALSE CLAIMS ACT**

The Department of Justice and certain Assistant United States Attorneys are abusing their authority by initiating False Claims Act (FCA) investigations of hospitals upon the discovery of evidence of a mistake or overutilization. These government officials have seized upon data analysis that flags billing errors and/or over-utilization and converted it into a presumption of FCA liability. FCA cases pose great risk to hospitals in terms of monetary and administrative sanctions. The threat of FCA liability leads hospitals to incur massive expenses related to retaining specialized counsel and outside forensic accountants and, in the event an overpayment is discovered, to negotiate a formal FCA settlement where a simple cost report adjustment is all that is really necessary.

#### **MEDICARE AND MEDICAID ELECTRONIC HEALTH RECORD INCENTIVES AND CERTIFICATION**

Use of electronic health records (EHRs) can improve care quality, efficiency and coordination. Hospitals have been leaders in health information technology (IT) development and use. But the high cost of acquiring and maintaining these systems has been the key barrier for broader hospital adoption. *The American Recovery and Reinvestment Act of 2009* authorized incentive programs under Medicare and Medicaid that will pay bonuses to “meaningful users” of certified EHRs beginning in fiscal year (FY) 2011, then phase-in penalties for those failing to meet “meaningful use” beginning in FY 2015. To be eligible for the incentives, hospitals must use EHRs that have been certified through a new federal process established by the Office of the National Coordinator for Health Information Technology (ONC). When Congress and the President passed this landmark program, hospital leaders were excited about the opportunity to be rewarded for their efforts to adopt health information technology. However, the rules set out to manage this program by CMS and ONC are overly complex and confusing, leaving many hospitals concerned about their ability to meet the programs’ demands. However, in a new AHA survey conducted over the past week, 53 percent of hospitals cite lack of clarity in regulatory requirements as a barrier to achieving meaningful use in a timely manner, while 52 percent cite complexity as a barrier. These barriers were cited slightly more often than upfront capital costs (52 percent) and ongoing costs (51 percent). Simplified regulations that recognize how health IT is really acquired, used and implemented are needed for this program to fully succeed and for hospitals to be able to meet the national goals of an e-enabled health care system.

**CLINICAL LABORATORY SIGNATURE ON REQUISITION**

CMS recently set a new requirement that a physician or qualified non-physician practitioner must sign requisitions for clinical diagnostic laboratory tests paid through the Clinical Lab Fee Schedule in order for the test to be payable. This policy change is unnecessary, redundant with common practice, and contrary to the agreement struck in the Clinical Laboratory Negotiated Rulemaking. It will result in delays in hospital laboratory testing resulting from labs having to track down the ordering physicians' signature that will be harmful to beneficiaries, and would unfairly hold hospital laboratories financially accountable for non-compliance that is outside of their control. In finalizing this policy, CMS has not presented an adequate rationale to merit such an onerous system change.

Thank you for the opportunity to share our concerns about the mounting regulatory burden faced by America's hospitals. It is our belief that this burden can be addressed considerably through a critical examination of the current rules and regulations and a common-sense approach to removing barriers to improving patient care.

Sincerely,

A handwritten signature in black ink, appearing to read "Rich Umbdenstock". The signature is fluid and cursive, with the first name "Rich" being more prominent.

Rich Umbdenstock  
President and CEO



**AMERICAN  
WIRE  
PRODUCERS  
ASSOCIATION**

*"Steel Wire and Wire Products  
for North America and the World"*

801 North Fairfax Street  
Suite 211  
Alexandria, VA 22314-1757

Phone: 703-299-4434  
Fax: 703-299-9233  
Email: [info@AWPA.org](mailto:info@AWPA.org)

Kimberly A. Korbel  
Executive Director

January 14, 2011

The Honorable Darrell Issa  
Chairman, House Committee on Oversight & Government Reform  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the member companies of the American Wire Producers Association (AWPA), I want to first thank you for your leadership on the issue of the burden of regulation on US employers. We appreciate the opportunity to comment on some proposed regulations which will have a serious and detrimental effect on wire and wire products manufacturers, while offering minimal benefit to our nation overall.

**Background**

The AWPA is a trade association which represents companies which collectively produce more than 80% of all carbon, alloy and stainless steel wire and wire products in the United States, and the steel wire rod companies and that supply the raw material for wire and wire products. The 80 member companies of the AWPA employ more than 19,000 workers in over 220 plants and facilities located in 33 states and 130 Congressional Districts and representing over \$7.5 billion in annual sales.

American wire and wire products manufacturers are entrepreneurial and work hard to maintain their competitive market position despite heavy import competition in their products, and the products of their customers. AWPA members pride themselves on high levels of productivity and constant reinvestment in the latest technology and equipment, keeping the American wire industry one of the most globally competitive segments of the steel industry.

There are two proposed rules of particular concern to AWPA member companies: Combustible Dust and the Toxics Release Inventory (TRI) Program Articles Exemption Clarification.

***OSHA – Combustible Dust – Proposed Rule Making***

The Occupational Safety and Health Administration (OSHA) is developing a rule to address the hazards of combustible dusts which encompass a wide variety of materials, industries and processes. It is understood that OSHA is anticipating much more

stringent limits on dust in the workplace and that the rule will be inclusive of ALL dusts regardless of their composition. AWP member companies cannot accept OSHA's goal to create a "one size fits all" standard with respect to dust generated by very diverse types of manufacturing facilities.

The problem is that OSHA is making no exception for dust that is neither combustible nor explosive (i.e., steel dust). Instead they are assuming that all dust is similar to that found in grain handling or wood manufacturing facilities. This is not only unscientific but also unreasonable for the many businesses that will have to comply with this rule, even though there is no danger of explosive incidents in their manufacturing facilities.

The Administration fails to acknowledge the significant differences between dust from steel facilities (which is not combustible) and the timber or paper industry (which is highly combustible). The dust from steel scrap and steel products is not combustible because most of the material is already oxidized due to the fact that its major component is iron oxide.

In addition, dusts generated in steelmaking processes vary greatly in chemical composition, particle size and shape, moisture content and other factors. Therefore, these dusts are already subject to numerous environmental regulations regarding both air emissions and waste disposal. As a result, the wire industry has made substantial efforts at reduction, recycling and other initiatives to reduce the hazards associated with handling and disposing of steelmaking dusts. Again, these efforts which are already in place are not being considered by OSHA in the draft of a new combustible dust rule.

Furthermore, according to draft documents prepared by OSHA, officials are considering a "zero dust" standard. Therefore, elimination of non-combustible and non-explosive dust from all beams, joists and other high-level surfaces of a wire manufacturing facility is not practical and not possible on a continuous basis. Rather, exposing the workers to the other hazards in the facility in order to remove the dust accumulations would be a step backward with regard to worker health and safety.

Finally, the wire industry puts worker safety at the top of the list. The industry cannot afford, and should not expend limited resources for hazards that do not exist in their facilities. These funds could better be used in safety initiatives that can provide the greatest good to worker safety and health. The adoption of a "one-size-fits-all" combustible dust standard will require the wire industry to design and retrofit manufacturing operations to eliminate all dust greater than zero. This will be astronomically expensive, if not impossible to achieve.

OSHA should first investigate whether a combustible dust standard is even needed for steel industry employees before developing any standard for this industry. A thorough and specific scientific analysis should be conducted to determine any potential risk to



steel-making industry workers. There should also be an examination of the compliance costs which includes a cost benefit analysis.

Furthermore any final regulation should be commensurate with the degree or level of possible explosion of the dust, instead of a "one-size-fits-all" dust standard. Any standard should also provide maximum flexibility for companies to individually achieve the greatest control over the hazard of accumulated dust in their facilities.

***EPA – Toxics Release Inventory (TRI) Articles Exemption Clarification  
Proposed Rule***

The Environmental Protection Agency (EPA) has drafted a proposed rule that would change the definition of the "articles exemption" provision which in essence would negate the provision overall. The articles exemption is a fundamental provision of the TRI Program, which has long acted to set reporting parameters and reconcile competing societal interests: protecting the public's right-to-know while minimizing the reporting burden on industries that produce finished goods. EPA is proposing to remove a paragraph of guidance dealing with releases due to natural weathering of product, thereby requiring the reporting of releases from finished goods in storage at manufacturing sites.

EPA has submitted to the Office of Management and Budget (OMB) a proposed rule to clarify the articles exemption of the Toxics Release Inventory. Since 1988, the Agency has interpreted the articles exemption as follows: "to exempt from TRI reporting the normal migration of reportable chemicals from finished goods that have completed the manufacturing process." The fundamental precept underlying this position has been that such migration is not caused by the "processing" or use of the item, but occurs continuously throughout the life of an article. Accordingly, any item of this nature should retain its status as an exempt article once manufacturing has been completed unless the item is subsequently processed or used at the facility and such activity causes additional emissions from the product beyond those that normally occur.

Under EPA's proposed clarification, however, emissions of chemicals from finished goods that are not processed or used or when sitting in storage would be reportable in the TRI. Such an interpretation contradicts the plain and common sense reading of the articles exemption. This proposed clarification would greatly increase reporting burdens on many wire producing companies and their customers, even though there is no demonstrable new emissions into the air of stored products.

In its justification, EPA has asserted that only an additional 158 entities would be affected by this clarification. We firmly believe this is grossly under-estimated as virtually all of the AWPA member company facilities would have to re-determine their status, resulting in the need to fully review the establishment's TRI compliance system. For a typical wire facility undertaking this review for the first time, approximately 2.5 man weeks would be required. We argue that this increased reporting burden will not make

our environment any safer or cleaner. Wire products and the wire rod used as raw material, while sitting in storage, are not and should not be considered a toxic release.

Although billed as an effort to clarify how the articles exemption applies to the treated wood industry, EPA's proposed interpretation would have broad applicability and far-reaching and unintended consequences for a host of industries, including the wire and wire products industry.

Furthermore, if these same finished products were en route to a retailer or sitting in a store, they would not be considered to be leaching toxics into the environment. We question the difference between a storage facility and shipment on a flat bed truck.

Finally, many of the raw materials used by wire and wire products manufacturers sit in outside storage before use. If this clarification was promulgated, these companies would have to calculate, on a case-by-case basis, how fast the steel rusts which would change day-by-day depending upon the weather and the material composition. This would be a monumental reporting headache and almost impossible to calculate.

### **Conclusion**

The additional man hours and millions of dollars that would be required in order to comply with just these two regulations would seriously and adversely impact wire and wire products companies. The industry is already reeling from the depressed economy; a serious drop in the construction and automotive industries; and unfair Chinese trade policies that have negatively impacted many of the product sectors in the wire industry.

**Unnecessary and unfair regulations that cannot be proven to demonstrably improve worker safety or our environment are not the answer.**

In addition, AWPAs concurs with the broader and more comprehensive comments submitted by the National Association of Manufacturers (NAM).

Thank you again for this opportunity to discuss two proposed regulations that will have a serious and adverse impact specifically on the domestic wire and wire products industry. If you have any questions about these proposals or need more information, please contact AWPAs Executive Director Kimberly Korbel at 703-299-4434.

Sincerely,



Walter Robertson  
AWPA President



**Dennis J. Hardman**  
*President*

January 10, 2011

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

Dear Congressman Issa:

Thank you for the opportunity to provide input on federal regulations that negatively impact the wood structural panel and engineered wood products industry. It is refreshing to know that Congress is examining the burden of regulations on jobs and our fragile economy.

APA represents plywood, oriented strand-board (OSB) and other engineered wood product manufacturers. Our industry employs a significant portion of the 900,000 forest products jobs in the United States.

In response to your request we polled our membership and several common concerns surfaced:

- **Formaldehyde Reassessment:** In June of 2010 EPA concluded that formaldehyde (FA) causes nasopharynx cancer, all leukemias, myeloid leukemia and lymphohematopoietic cancers as a group. This finding ignored, or did not properly cite, several recently published independent studies. EPA also proposed a maximum FA exposure level of 0.007 ppb, far below naturally occurring levels including exhaled human breath at 2.0 ppb. In response to these questionable conclusions, the National Academy of Sciences is currently reviewing EPA's reassessment with a final report expected in February, 2011. We are confident that the NAS findings will not support EPA's recommendations. Should EPA ignore the NAS findings, a broad array of industries, well beyond just forest products, will be faced with extraordinary burdens and costs.
- **Boiler MACT:** EPA is in the process of setting emission limits for several hazardous air pollutants (HAPs) from industrial boilers under a court ordered deadline. EPA is also setting HAP limits for solid waste incinerators and boilers at smaller sites. The June, 2010 proposed rules would impose over \$6 billion in capital costs on the forest products industry and over \$20 billion on a wide array of manufacturers. Those costs put tens of thousands of jobs at risk due to mill closures.

REPRESENTING THE ENGINEERED WOOD INDUSTRY

7011 South 19th Street • Tacoma, WA 98466-5333 • Phone: (253) 565-6600 • Fax: (253) 565-7265 • [www.apawood.org](http://www.apawood.org)

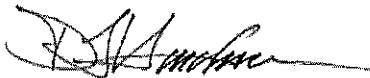
- Ozone NAAQ: EPA is considering significantly tightening the already tougher 2008 ozone standard two years ahead of schedule. Once EPA issues a new ozone standard, states will identify non-attainment areas and then develop implementation plans to reduce emissions of nitrogen oxides (NOx) and volatile organic compounds (VOCs) – the precursors to ozone. Cost to the forest products industry could approach \$3 billion in new capital expenditures and lead to additional national rules that control cross-boundary transport of air emissions (so called “Transport Rule II”). According to an API/NAM study, the costs could approach \$1 trillion over 10 years to meet a 60 ppb ozone standard. EPA should defer any action until 2013 on its usual 5 year review cycle and reexamine the health science behind the standard.
- EPA Greenhouse Gas (GHG) regulation under the Clean Air Act: Effective January 2, 2011, EPA’s regulation of GHGs from stationary sources under the Prevention of Significant Deterioration and Title V programs breaks with long standing precedent for biomass carbon neutrality and treats the combustion of biomass identically to the combustion of fossil fuels. EPA chose not to exempt sources of biogenic emissions in its preceding Tailoring Rule. Two-thirds of the energy needs of forest products mills are met through wood biomass residuals. Counter to Administration objectives, EPA’s treatment of biogenic emissions ignores the renewability of the resource and stymies investment in renewable energy. EPA should recognize the principle of carbon neutrality under the Clean Air Act.
- EPA Greenhouse Gas Mandatory Reporting Rule: Facilities must report their 2010 GHG emissions beginning April 1, 2011. Unlike other regulations, EPA has not allowed facilities to propose alternative methods for calculating emissions or allowed *de minimis* emissions levels under which reporting is unnecessary. This inflexibility makes the rule inherently more expensive to implement than is necessary. EPA has also proposed to make public inputs to GHG emissions calculations which are traditionally considered confidential business information.
- Combustible Dust. OSHA issued an advance notice of proposed rulemaking on combustible dust in October, 2009. Complying with the new rule could potentially cost the forest products industry and numerous other industries many millions of dollars in capital expenditures and higher operating costs without materially improving worker safety. To be most cost-effective, combustible dust regulations should rely on performance-based approaches rather than proscriptive standards and that engineering controls should only be required for new facilities or if major renovations are made to existing facilities.
- Noise Enforcement. OSHA issued a notice on October 19, 2010, indicating that it plans to change its official interpretation of workplace noise exposure standards. Until now, OSHA allowed the use of “personal protective equipment” such as ear plugs and ear muffs as the first means of reducing workplace noise exposure to acceptable levels. Now, the Agency is reinterpreting an existing rule to say that companies will need to use administrative changes and engineering controls and a first line of defense. According to the notice, these changes must be adopted regardless of the costs unless an employer can prove that making such changes will “put them out of business” or severely threaten the company’s “viability.” OSHA’s new enforcement policy disregards costs and is at odds with the common-sense hearing protection approaches that have been used successfully for decades.

- Endangered Species Act: Overly burdensome requirements that the Fish & Wildlife Service (FWS) is placing upon the potential habitat for listed species. For instance, the Spotted Owl recovery plan is restricting activity on lands that *may* be suitable habitat for the Spotted Owl, irrespective of whether the Owl is present in that region. The new Draft Plan rejects the current strategy which is based on the assessment that the owl can be recovered by establishing a network of Late Successional Reserves (LSR's) on federal lands. No supporting scientific analysis was given, and the FWS is calling for the protection of all owl sites and all high quality spotted owl habitat on all lands regardless of ownership. This Draft Plan has the potential to shutter mills and destroy jobs as fiber supply from both federal and private lands is constrained.
- Health Care: Although the full impact of recently passed health care legislation is still uncertain, it is clear that additional employer costs will be substantial, as will the burden of what promises to be extreme complexity in compliance.
- Transportation: The Federal Motor Carrier Safety Administration CSA 2010 imposes new regulations on truck drivers that will drive up transportation costs, as will Positive Train Control's impact on railroads.
- Labor: Card-Check (Employee Free Choice Act) gives union organizers an unfair advantage in any attempt to unionize an operation.

Taken individually these regulations are onerous and expensive to industry, often with questionable cost/benefit rationalizations. Collectively they consume extraordinary time and capital that could be better used to increase our global competitiveness and create U.S. jobs.

Again, thank you for the chance to provide input on regulations impacting our industry. And best of luck in your committee's efforts to provide meaningful government oversight and reform.

Sincerely,



Dennis J. Hardman  
President

cc: The Honorable Edolphus Towns



ASSOCIATION OF  
EQUIPMENT MANUFACTURERS

AGRICULTURE  
CONSTRUCTION  
FORESTRY  
MINING  
UTILITY

January 24, 2011

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

Dear Chairman Issa:

Thank you for your letter concerning the Committee's interest in examining existing and proposed regulations that negatively impact the economy and jobs. All sectors of equipment manufacturing have been hit especially hard by these difficult economic times and are just now stabilizing and showing some positive trends.

The Association of Equipment Manufacturers and its members take great pride in the promotion of safety in the workplace and the proper use of equipment. We represent manufacturers who build equipment in the agricultural, construction, forestry, mining and utility sectors. I believe the two alliances we signed with federal agencies (OSHA and MSHA), positively brought companies and regulators together to promote and improve workplace safety. In addition, AEM annually produces and distributes thousands of safety manuals and has many product-specific committees that review and discuss best practices. During some recent committee meetings, the following regulations were identified as concerns among our members:

- 1) OSHA Noise Standard: The proposed changes to the OSHA Noise Standard interpretation would have been very burdensome. We were pleased to hear this potential costly interpretation was withdrawn. It could have impacted all five sectors.
- 2) The New OSHA Crane Rule: The latest changes introduced in the new crane regulation will impact products outside the area of conventional cranes, including some agricultural and utility applications. In some cases, the inclusion in this regulation is by identification and others by possible job function. This new revision will impact additional products like rough-terrain forklifts, end-loaders, excavators and skid steer loaders, none of which have a record of safety issues that would warrant these new regulations. Under the new crane rule, all above products would require conditional licensing of operators in the future.
- 3) MSHA Regulation Interpretations: Some recent MSHA regulation interpretations are overly burdensome to industry. These are not new regulations, but rather interpretations of existing regulations, such as fall protection on mobile equipment and access systems.
- 4) Emission Regulations and Required Reporting including:
  - a. Reporting requirements for engines installed in equipment under the EPA's flex scheme will create an expensive clerical burden that will linger for years. (In practice, almost all of our members who manufacture whole goods are impacted by these regulations.)
  - b. New greenhouse gas reporting regulations concerning the use of fuel in asphalt plants.
  - c. Regulations concerning the use of waste oil for fuel in asphalt plants. EPA now lists waste oil as a hazardous material, so asphalt plants burning waste oil (an efficient and sensible use of a waste product) will be considered hazardous waste incineration sites.

While we have not taken steps to quantify the job and economic impacts of the above regulations, we wanted to share them with you and commit that we will continue our internal research and discussions on existing and proposed regulations.

Sincerely,

Dennis J. Slater  
President

1001 Wisconsin Avenue, NW  
Suite 475  
Washington, DC 20007

T 202.462.1000  
F 202.462.1000



January 13, 2011

Chairman  
S. BECKER  
Nissan

President  
M. STANTON

VEHICLE  
MANUFACTURERS

Aston Martin  
Ferrari  
Honda  
Hyundai  
Isuzu  
Kia  
Mahindra  
Maserati  
McLaren  
Mitsubishi  
Nissan  
Peugeot  
Subaru  
Suzuki  
Toyota

AFFILIATES

ADVIS  
Bosch  
Delphi  
Denso  
JAMA

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

Dear Chairman Issa:

The Association of International Automobile Manufacturers (AIAM)<sup>1</sup> appreciates your December 29, 2010 letter seeking our assistance in identifying existing and proposed regulations that have or could negatively impact job growth. Though there are a large number of regulations affecting our industry, we will focus on the two most critical ones:

- standards limiting greenhouse gas (GHG) emissions and fuel consumption of light vehicles manufactured in model years 2017-2025; and
- authorization of the use of gasoline with up to 15 percent ethanol content.

AIAM companies are committed to building affordable, reliable, fuel efficient vehicles for U.S. consumers and doing so in a socially responsible manner. We have long supported a single, national program to improve fuel economy and reduce GHG emissions, and are committed to working with Congress, the Administration, California and other stakeholders in laying out a coordinated path towards a cleaner, more fuel efficient and less energy-dependent future.

AIAM also agrees that the use of alternative fuels and technologies for transportation offers potential energy security, environmental, and economic benefits by reducing U.S. dependence on petroleum. Accordingly, we support performance-based, technology-neutral policies with respect to alternate fuels as a way to maximize opportunities for innovation.

It is with these objectives in mind, we offer the following comments.

---

<sup>1</sup> The Association of International Automobile Manufacturers, Inc. (AIAM) is a trade association representing 15 international motor vehicle manufacturers who account for 40 percent of all passenger cars and light trucks sold annually in the United States. Nationwide, international automakers have invested over \$43 billion in U.S.-based production facilities, have a combined domestic production capacity of 4.2 million vehicles, directly employ over 80,000 Americans, and generate almost 600,000 U.S. jobs in dealerships and suppliers nationwide.

## **I. Motor vehicle greenhouse gas and fuel economy standards**

On May 21, 2010, the White House directed the Environmental Protection Agency (EPA) and the National Highway Traffic Safety Administration (NHTSA) to issue joint standards limiting the GHG emissions and fuel consumption of passenger cars and light duty trucks manufactured in model years 2017-2025. The Memorandum directs the agencies to "produce joint federal standards that are harmonized with applicable state standards, with the goal of ensuring that automobile manufacturers will be able to build a single, light-duty national fleet." Our members strongly supported the President's Memorandum and the Administration's efforts to achieve harmonized standards.

On September 30, EPA and NHTSA issued a Notice of Intent (supplemented on November 30) to establish these standards and they also issued a related Technical Assessment Report (TAR). The agencies plan to issue proposed standards by September 30, 2011, and final standards by July 31, 2012. In these Notices and the TAR, EPA and NHTSA assessed the impacts of an increase in stringency of the standards at rates ranging from 3 - 6 percent annually over the 2017-2025 period. The agencies currently estimate that achieving these reductions would increase new vehicle costs by up to \$3,500 per vehicle.

AIAM has supported, and in fact encouraged the efforts of EPA, NHTSA, and the State of California to achieve harmonized light vehicle standards, in order to reduce the inefficiency and waste associated with having to meet separate, inconsistent, and potentially conflicting regulations regarding GHG emissions and fuel efficiency that accomplish the same environmental goal. In our view, the National Program approach that has emerged from negotiations involving the Obama Administration, States, vehicle manufacturers, and other parties that resulted in the 2012-2016 standards has been a positive step. However, we are concerned that EPA, NHTSA and California do not appear similarly aligned on the 2017-2025 rulemaking.

We also note that the broad range of standards being analyzed by the agencies could result in widely varying degrees of compliance obligations and costs. Our goal is to work with the agencies to ensure that the final standards meet our national needs, are technologically feasible and result in costs and benefits that are aligned. The challenge in this proceeding is to ensure that the technology benefit and cost assessments that form the basis for the 2017-2025 standards are reasonable and reflect the inevitable uncertainty in projecting the costs and effectiveness of new technologies and market conditions, including the price of carbon fuels.

## **II. Blending of ethanol in gasoline**

On October 13, 2010, EPA partially granted a waiver request application from Growth Energy, a manufacturer and strong proponent of corn-based ethanol, to allow gasoline that contains up to 15 percent ethanol content (E15) to be used in model year 2007 and newer vehicles. EPA granted the partial waiver to passenger cars and light-duty trucks currently on the road, even though these vehicles were certified and warranted only for gasoline with a maximum of 10 percent blended ethanol (E10). While this waiver is limited to model year 2007 and newer



vehicles, EPA is currently assessing the appropriateness of extending it to older 2001-2006 model year vehicles. EPA declined to allow the use of E15 in model year 2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles (e.g., delivery trucks), highway and off-highway motorcycles, and nonroad engines, vehicles, and equipment (e.g., boats, snowmobiles, and lawnmowers). There is very strong evidence that higher level ethanol blends can cause significant environmental, emissions, engine durability, operational and potentially safety problems in many gasoline engines.

As leaders in the development of fuel efficient vehicles, AIAM member companies are pioneering technologies to advance the goals of increasing fuel economy and reducing GHG emissions. We continue to support the use of alternative fuels, including ethanol. However, before any new fuel is introduced into the marketplace, we believe comprehensive, independent and objective scientific testing must be completed to show that the fuel will not increase air pollution, harm engines, or endanger consumers. In our view, EPA prematurely granted the partial waiver before critical studies on the effects of E15 use were completed and should have applied it prospectively, if at all.

In addition, assuming the Clean Air Act even permits this **partial** waiver, it requires EPA to develop effective countermeasures to prevent misfueling (i.e., the intentional or inadvertent introduction of fuel blends that are approved for one category of vehicles into other vehicles or engines that are not designed to accommodate such fuels). We do not believe that EPA's planned measures to address misfueling are adequate. The result is an Agency decision and administrative procedure not authorized or supportable under current law. Moreover, AIAM has serious concerns about the potential product damage, emissions increases, safety problems, and resulting liabilities for auto manufacturers that will stem from misfueling, which EPA has so far failed to adequately address.

Therefore, AIAM, as part of a coalition of automobile and engine product manufacturers, has filed a petition challenging EPA's decision to grant the partial waiver approving the sale of E15 for 2007 model year and newer passenger cars and light trucks. We encourage your Committee to consider the potential impacts of the E15 waiver on consumers and manufacturers.

We appreciate your efforts to eliminate unnecessary burdens associated with government regulations and to improve U.S. economic conditions. We would be pleased to provide you with any additional information to help you in these efforts. Please feel free to contact me at 202-650-5550 if you have any questions on these matters.

Sincerely,



Michael J. Stanton  
President & CEO

DRIVING THE AFTERMARKET INDUSTRY

January 11, 2011

Dear Chairman Issa:

Thank you for reaching out to the Automotive Aftermarket Industry Association (AAIA) for our input on current and upcoming regulatory proposals that will have a negative impact on the economic well being of our industry.

AAIA is a Bethesda, Md.-based association whose more than 23,000 members and affiliates manufacture, distribute and sell motor vehicle parts, accessories, service, tool, equipment, materials and supplies. Through its membership, AAIA represents more than 100,000 repair shops, parts stores and distribution outlets. Not only is our industry important to ensuring the mobility of Americans; but it is a leading participant in the U.S. economy, with over \$285 billion in sales, contributing two percent to the Nation's Gross Domestic Product and employing 4 million people.

AAIA's members are particularly concerned about a proposed rulemaking that is being undertaken by the Environmental Protection Agency that would categorize used oil as a Non-Hazardous Secondary Material requiring it to be managed as a solid waste. This rule was designed to define the term "solid waste" and to determine whether "solid waste," if combusted, is required to be combusted in a unit meeting emissions standards specified under section 129 of the Clean Air Act (CAA) for solid waste incinerators or for commercial, industrial, and institutional boilers under section 112 of the Clean Air Act.

The used oil regulations developed in 1985 have encouraged recycling by establishing a reasonable regulatory scheme which then has encouraged the development of markets for "On-Specification" and "Off-Specification" used oils. As a result, used oil is now considered a traditional fuel and has become valuable commodity. These rules have been strengthened over the years to continue the success of the program while protecting human health and the environment. The current EPA proposal will undue much of this progress and will have extensive negative environmental consequences, likely leading to the improper disposal of used oil by do-it-yourselfers (DIY).

Specifically, the changes being proposed would mean that a service station or repair shop that receives DIY oil would have to send it out for testing before they could burn it. If it turns out to be off-specification (a possibility in a very limited number of cases), the service station then would have to send that used oil to a commercial and industrial incinerator.

Quite simply, this rulemaking will add costs to the bottom line of many small businesses in the vehicle repair business who will now be forced to either test the product or not have it available as a cost effective fuel. It will also place an undue economic burden on industry, states, and local communities who also rely on this valuable commodity. This is a clear example of an ill-advised rulemaking that not only harms small business but the environment as well.

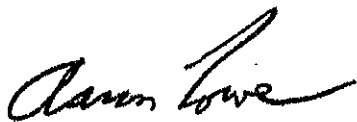
As second regulatory proposal that could have far-reaching in the automotive aftermarket and many other industries is the Occupational Safety and Health Administration's (OSHA) proposed rulemaking regarding occupational injury and illness Recording and Reporting Requirements, specifically the proposed requirement of a separate column in OSHA 300 recordkeeping and recording illness and injury log to record "work-related" musculoskeletal disorders (MSDs). Our primary concerns are that OSHA will go forward with a rule that relies upon an unclear, unagreed upon definition of musculoskeletal disorders (MSDs). Use of a flawed definition will lead to an overstatement of the incidence of workplace-related MSDs. We are extremely concerned that these figures will then be used by OSHA in the promulgation of an ergonomics rule at some point in the not-too-distant future.

While our member's workplaces are committed to ensuring the safety and health of our employees, the requirements that OSHA is proposing regarding the recording of MSD incidences will be costly and difficult for our members to implement. We are further unclear as to whether the information that will be obtained will be useful or extremely misleading as to extent of MSD related injuries in the workplace.

Mr. Chairman, we applaud your effort to identify and take a closer look at existing and proposed regulations that are likely to do harm to employers, industry, and the economy. A great many of the goals of such regulations are laudable, but these goals need to be pursued using reasonable, responsible, and well-informed regulatory frameworks.

Thank you for the opportunity to help identify regulatory measures that may negatively impact the automotive aftermarket. If you need any further information, please feel free to contact me at [aaron.lowe@aftermarket.org](mailto:aaron.lowe@aftermarket.org) or (301) 654-6664.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Lowe". The signature is fluid and cursive, with a long, sweeping underline.

Aaron Lowe  
Vice President, Government Affairs



**Tim Keating**  
Senior Vice President  
Government Operations

The Boeing Company  
1200 Wilson Blvd MC RS-00  
Arlington, VA 22209

January 11, 2011

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

Dear Chairman Issa:

Per your request for information regarding existing and proposed major regulations that have negatively impacted job growth for our industry, I have attached our written response and relevant materials for your review.

The Boeing Company and its subsidiaries directly employ over 150,000 people, and support approximately 1.2 million more supplier-related jobs in all fifty states. The Boeing Company is thus affected by many regulations that compromise our ability to grow and add jobs. We have identified five major areas of concern: government acquisition, financial regulatory reform, commercial intellectual property, OSHA, and aviation. Information regarding the impact of proposed and existing regulations in these five areas is included in the written response and attachments.

If you have any additional questions, please do not hesitate to contact me in the future.

Sincerely,

A handwritten signature in black ink that reads 'Tim Keating'. The signature is written in a cursive, flowing style.

Tim Keating

cc: The Honorable Elijah Cummings, Ranking Member

## Acquisition Policy

There are hundreds of statutory and regulatory requirements that have been enacted over the years that are part of the Government's acquisition process. These requirements have many purposes, such as providing a framework of processes for how agencies conduct acquisitions and enter into and oversee contracts. These requirements also address many social policies that are implemented by imposing requirements on government contractors with the laudable goal of improving labor or environmental standards, or human trafficking, for example, by in effect having contractors take on the responsibility to implement those social policies on contracts and employees working on government contracts. For each of these requirements there are also oversight organizations to ensure the implementation and effectiveness of the rules.

The cost and benefit of these statutory and regulatory requirements has often been studied to ensure that the acquisition process works as intended, without unnecessary complexity while ensuring transparency, accountability and public trust. In December 1994 Deputy Secretary of Defense William Perry commissioned a study of the complex regulatory environment intended to maintain public accountability in defense acquisition and prevent contractor abuses. The goal of the study was to assess the industry cost impact of specific regulations unique to Government contractors, to measure the overall impact of the regulatory environment on contractors' costs and to identify the key regulatory cost drivers and how they impact contractors' business processes. The study concluded that there was a significant cost premium from the extra regulatory requirements for government contractors - an 18% cost premium. This assessment led to many efforts to streamline and simplify the acquisition process.

Now decades later there continue to be new requirements added with more complexity and cost associated with each requirement. We are not questioning the need for appropriate acquisition processes and controls. We do question whether the cost impact of the layers of complexity and the ripple effect throughout the government contract supply chain is clear, its impact on global competitiveness, on jobs and the industrial base. We know there is no easy solution, and over a hundred studies have been done on this subject.

One recent example highlights the ripple effect of a law, one having to do with conflict minerals. The intent was to implement a social policy, not through international treaties but through private companies, including government contractors, by imposing a requirement for all companies that are subject to filing with the Securities and Exchange Commission. The SEC rule implementing the Dodd-Frank conflict minerals provision is expected to require each SEC filer whose products contain certain minerals (tin, tantalum, tungsten, or gold) to:

- Determine whether any of these minerals used in its products originated in the Congo or adjoining countries

- Disclose in its annual report whether the minerals did or did not originate in the Congo or adjoining countries
- Disclose in its annual report what measures it took to determine the country or countries of origin
- Maintain auditable records to verify the determination

If the filer determines that its products contain minerals from the Congo or adjoining countries (or if the filer is unable to determine whether or not they do), the filer must also:

- Add a Conflict Minerals Report in its annual report, describing due diligence on the source and chain of custody of the minerals, an independent private sector audit of such report, a description of all products containing the minerals, and a description of the efforts to determine the country and mine of origin

These requirements will be extremely burdensome and costly, if not impossible, for a company like Boeing to comply with, as they require visibility many tiers down a complex and international supply chain.

This is a good example of the ripple effect throughout the supply chain of requirements that may be well intentioned but have a huge cost and negative impact on global competitiveness, making it harder to win business that enables us to retain our workforce and keep our plants and suppliers operating, including all the small businesses that are a critical part of Boeing's success.

## **Financial Regulatory Reform**

### *Derivatives-Mandatory Clearing*

The Boeing Company pension trust uses over-the-counter derivatives to manage and hedge pension plan assets. Unlike public pension funds, private pension trusts are subject to ERISA and Department of Labor fiduciary responsibility requirements, and the use of swaps must be made solely in the interest of the plan's participants and beneficiaries.

Under the Dodd-Frank Act, ERISA-covered private pension plans are treated as "financial entities". Therefore, any swap used by the trust must be cleared and margin requirements will be imposed. If the trust is required to clear all swaps, these requirements would be very costly to both pension fund operations and would reduce the amount of pension assets available to pay out to their beneficiaries.

### *Derivatives-Determination of Foreign Exchange Swaps and Forwards*

The Boeing Company uses over-the-counter derivatives primarily to stabilize production and operating costs. We procure parts globally for the manufacture of our products, some of the procurement contracts are priced in foreign currencies. We use OTC derivatives to minimize the variability of the U.S. dollar cost of these foreign currency denominated procurement contracts.

The Dodd-Frank Act requires the Department of Treasury to issue regulations regarding whether foreign exchange ("FX") swaps and forwards should be exempt from the mandatory clearing and trading requirements under the Commodity Exchange Act. Although Boeing is considered a "commercial end-user" and is therefore not required to clear its swaps, transactions with our counterparties are not exempt from margin requirements. If FX swaps are subject to the requirements under the Act, these margin requirements could be significant and would therefore impact our business operations if such cash is no longer available for our day to day business needs.

### *Whistleblower Rules*

The SEC will shortly issue regulations implementing the Dodd-Frank law's whistleblower bounty provision, which guarantees whistleblowers 10-30% of any fine over \$1 million attributable to original information they provide the Commission. Unless carefully implemented, this provision has the potential to eviscerate internal compliance organizations that companies have spent decades creating in response to longstanding federal public policy. It also threatens to overwhelm the Commission with an avalanche of tips and complaints that will frustrate its ability to prioritize high-quality leads.

### *President's Working Group on Money Market Funds-Floating Rate NAV*

Under the proposals discussed in the Report of the President's Working Group on Financial Markets on Money Market Fund Reform Options, the recommendation would move from the current stable NAV to a floating NAV. Changing the nature of money market funds will disrupt funding and cash management, and companies like Boeing would be less likely to invest. A floating rate NAV issue could potentially be a drain on cash flow.

### **Commercial Intellectual Property ("IP")**

Boeing supports engagement globally on developing rigorous IP legal norms, standards of practice and underlying legislative requirements to enforce those IP protections domestically and abroad, both to enable a valid IP licensing business model and to prevent counterfeiting of aerospace and defense components and piece parts. In the federal market space, including the Department of Defense, those same global

enforcement mechanisms are critical for similar reasons. Additional focus is needed however, to prevent the "taking" of private sector IP by the United States Government in the form of statutory changes to the "developed at private expense" doctrine currently embedded in the federal acquisition regulations (including impacts to "Independent Research and Development" contract cost allowability). It is also important to prevent regulatory implementation of changes contractually favoring the USG when acquiring licenses and rights in technical data from commercial item providers, including contract clauses disproportionately and unfairly shifting the burden of proving rights ownership from the USG to federal contractors, both commercial and USG unique suppliers.

## OSHA

The OSHA reinterpretation of its "Noise Standard" would reinterpret the term "feasible" to require manufacturers to install/institute costly engineering or administrative controls to lower the noise in manufacturing and other operations. Currently, employers are allowed to use personal protective equipment to control noise and are only required to implement engineering/administrative controls where the personal protective equipment is ineffective. Under the reinterpretation, however, manufacturers such as The Boeing Company will likely be required to either institute engineering controls (e.g., changes to the facility, noise drapes, etc.) or administrative controls (rotating employees in and out of noise producing environments), where engineering controls are not feasible. It is difficult to see how any type of engineering control would work on an airport runway.

## Aviation

### *Lack of prioritization of NextGen for national airspace system infrastructure*

NextGen implementation has the potential to be a catalyst for tens of thousands of good-wage aerospace jobs over the next decade. However, the FAA continues to drag its feet on implementation of NextGen. If airlines are to realize the value and promise of a new air traffic control system, they have to be assured that the promises of NextGen will be actual; rather than theoretical. An excellent example of this is the need of airlines to invest in aircraft avionics technology to access NextGen technology. Airlines are reluctant to invest the estimated \$4 billion dollars in new technology unless they know their system will actually enhance safety, reduce fuel burn and create new efficiencies allowing more direct routes and reduced flying time.

### *Excessive burden of direct and indirect security costs on U.S. airlines*

Carriers are concerned about a proposed increase in the 9/11 security fee. The President's budget proposes a \$1 increase in 2012, 2013 and 2014. Airlines are also concerned about an increase in the Passenger Facility Charge that airports are allowed



to charge on a per-passenger basis. Airlines are expected to pass these fees along to consumers. However, when airline pricing power declines, carriers are often forced to avoid fare increases and government mandated fees are actually not passed on to the passenger in the form of a higher ticket fee.

James C. Greenwood  
President & CEO

January 20, 2011

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

Dear Chairman Issa:

I am writing in response to your December 29, 2010 letter regarding proposed or existing federal regulations that negatively impact private sector job growth in the United States. As President and CEO of the Biotechnology Industry Organization (BIO), I am writing on behalf of more than 1,100 biotechnology companies, academic centers and research institutions across America representing the fields of human health, food and agriculture and industrial and environmental biotechnology.

America leads the world in biotechnology innovation and our industry holds great potential for future economic growth and job creation while already employing, directly and indirectly, millions of U.S. workers at wages that are roughly 70 percent above the national average. I share your concerns that our federal regulatory apparatus, while necessary, should not impede robust economic growth and job creation. As such, please see below some of the regulatory matters of concern to the biotechnology industry grouped according to the sector of the industry they most impact. I look forward to working with you and other Members of Congress to ensure that federal regulations serve their intended purpose without hampering job creation and economic development.

Regulations Impacting Small, Emerging Healthcare Companies

- The Small Business Innovation Research Program (SBIR) is administered by SBA and sets aside 2.5 percent of each federal agency's extramural R&D budget for grants to innovative small businesses. This program, while very worthwhile, has unfortunately been undermined by a regulatory interpretation that currently excludes many of the most innovative small businesses, especially in the area of biotechnology. Specifically, the SBA Office of Hearings and Appeals (OHA) ruled in 2003 that a business majority-owned by venture capital investors would no longer qualify for the program regardless of number of employees or any other traditional small business standard. This ruling was subsequently implemented through SBA regulations. We believe the ruling and subsequent regulations unnecessarily and unwisely restrict the flow of SBIR funds to some of our nation's most cutting-edge innovations. Given that the venture capital restriction is not embodied in statute, we believe the SBA has ample authority to repeal OHA's misguided ruling by regulation and allow all small businesses to compete for SBIR funds on a level playing field.



- Section 404(b) of the Sarbanes-Oxley Act requires public companies to perform an external auditor attestation of a company's internal financial controls in addition to all the normal audit work expected of a public company. This work, which can add as much as a million dollars to a company's yearly accounting costs, is required even for small public biotech companies that have not commercialized an initial product and do not yet have revenues from sales. While BIO applauds the SEC for implementation of a permanent exemption from Section 404(b) of SOX for companies with public floats of \$75 million or less, we believe the SEC has authority to broaden this exemption so as to lessen the burden on small companies attempting to commercialize new innovations. Specifically, as the SEC conducts its analysis on compliance costs associated with Section 404(b), BIO believes the public float cap should be raised to \$250 million. This could be accomplished either by amending Section 404(b) of Sarbanes-Oxley or by amending the definition of "smaller reporting company" under Securities Exchange Act Rule 12b-2. Currently, 66 percent of public biotech companies fall under the \$250 million public float threshold and an exemption would help these companies continue to grow jobs during this rough economic climate.

#### Regulations Impacting Food and Agricultural Biotechnology Companies

- Plant Protection Act regulation for agricultural biotechnology (7 CFR 340): The United States Department of Agriculture's authorizations for agricultural biotechnology products has significantly slowed down for a variety of reasons, including issues related to the National Environmental Policy Act (NEPA) lawsuits, resulting in a large backlog of products awaiting decisions, reduced investment in research and development and companies looking to conduct research and development of innovative products in other countries. Moreover, USDA has now proposed to mandate additional, non-scientific measures on agricultural biotech products in the name of coexistence. Matters related to coexistence and market demands should be left to farmers to choose their production methods.
- Federal Insecticide, Fungicide and Rodenticide Act regulations for Plant Incorporated Protectants: The Environmental Protection Agency is considering substantially expanding its authority to regulate all agricultural biotechnology products beyond those that have pesticidal properties. In addition, BIO has requested over several years that current regulations be amended to recognize that plants are not chemical manufacturing buildings.
- Food and Drug Administration (FDA) approvals for genetically engineered (GE) animals: FDA approvals of GE animals are not occurring on a timely basis, and BIO's concern is that FDA is more worried about consumer acceptance rather than science-based safety decision. NEPA requirements are resulting in even more extended delays. These extended delays are drying up investment in research and development of these products which leads to companies struggling to stay in business.

Regulations Impacting Industrial and Environmental Biotechnology Companies

- We are concerned about the Department of Energy's implementation of its loan guarantee program for clean energy facilities. Specifically, we believe the program's overly restrictive and inflexible eligibility criteria exclude promising advanced biofuels projects -- contrary to Congressional intent -- frustrating industry efforts to secure private financing and create thousands of high quality jobs through construction of first-of-a-kind advanced biofuels facilities.

Sincerely,

A handwritten signature in black ink that reads "Jim Greenwood". The signature is written in a cursive style with a large, looping initial "J".

James C. Greenwood  
President and CEO  
Biotechnology Industry Organization



Bumble Bee Foods, LLC  
P.O. Box 85362  
San Diego, CA 92186-5362  
9655 Granite Ridge Drive, Suite 100  
San Diego, CA 92123  
(858) 715-4000 Ph.  
(858) 560-6045 Fx.  
<http://www.bumblebee.com>

January 14, 2011

The Honorable Darrell Issa  
U.S. House of Representatives  
2347 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Issa:

Congratulations on your re-election and your ascension to Chairman of the House Committee on Oversight and Government Reform! We look forward to your leadership.

As you may know, Bumble Bee Foods (BBF) is headquartered in San Diego, California, and a number of our workers reside in your congressional district. We are the largest shelf stable seafood company in North America and one of the top 10 seafood companies in the world. Our company manages almost \$1 billion in annual sales of seafood including canned tuna, salmon, sardines, clams, shrimp and other species of seafood. In addition to our San Diego offices, we operate a state-of-the-art tuna cannery in Santa Fe Springs where we produce more than 354 million cans of tuna annually, worth close to \$200 million.

As a California company, BBF is seeking your assistance to correct the anticompetitive government purchasing policies of the U.S. Department of Agriculture (USDA). The change we are seeking to USDA's Buy America policy will increase competition in its canned tuna purchase program, increase the supply available to the program, increase support for U.S. tuna fishing vessels, benefit hundreds of tuna cannery workers in the U.S. and save taxpayers millions of dollars.

BBF is the last U.S.-owned tuna processing company; our competitors have been purchased by Korean and Thai seafood companies. Within the three major companies that sell canned tuna in the U.S., only the Korean owned company, StarKist, currently qualifies for sales to our government. This is due to a regulatory deviation that USDA has taken from the government wide Buy America policy that requires all fish products to be "completely processed" in the U.S.

The "completely processed" requirement excludes canned tuna produced in the U.S. by BBF because a small component of our processing cost (about 10%) has foreign content. BBF operates tuna canneries in Puerto Rico and California and each of our plants receives a supply of tuna harvested by U.S. flag tuna vessels after the tuna has been partially processed into frozen loins (fillets) in processing plants close to the fishing grounds. The frozen loins are then sent to our U.S. canneries where processing is completed and they are converted into canned tuna. By partially processing tuna





Bumble Bee Foods, LLC  
P.O. Box 85362  
San Diego, CA 92186-5362  
9655 Granite Ridge Drive, Suite 100  
San Diego, CA 92123  
(858) 715-4000 Ph.  
(858) 560-6045 Fx.  
<http://www.bumblebee.com>

near the fishing grounds and completing the processing and canning in the U.S., our domestic facilities have been able to survive the intensely competitive environment caused by low cost foreign imports. Our canneries are located in the U.S., we employ US citizens, we adhere to the U.S. minimum wage requirements and are subject to all OSHA requirements, yet we can't sell our tuna to the government. This is the same high quality canned tuna that consumers purchase in local grocery stores.

More than 2 years ago, BBF petitioned the USDA to change their regulations to reflect the standard USDA Buy America requirements imposed by Congress. We have provided them with documentation demonstrating that under the existing monopolistic situation USDA is paying more than retail prices for canned tuna. After a number of meetings and calls with USDA officials, it has become clear that without congressional intervention the agency will not amend their regulations.

The regulatory change we seek does not guarantee that BBF will be successful in selling even one can of tuna to the USDA, but it does guarantee that there will be competition in the program. I am hopeful that oversight of this program by your committee will convince the USDA to amend their anti-competitive regulations.

I would enjoy the opportunity of speaking with you or your staff further about this very critical issue and I want to thank you in advance for your personal attention to this matter.

Sincerely,

Christopher D. Lischewski  
President and CEO





January 10, 2011

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

Dear Chairman Issa:

On behalf of the Brick Industry Association, representing U.S. clay brick manufacturers, distributors, and suppliers that generate jobs for approximately 200,000 Americans, we appreciate the opportunity to assist the Committee's oversight of regulations that negatively impact brick industry jobs and economic recovery. We are deeply concerned about the cumulative burden of costly regulations that provide no commensurate benefit to environment, health and safety, yet further jeopardize the economic viability of brick companies and domestic brick jobs.

According to the 2009 Annual Brick Industry Report, approximately 9,000 direct manufacturing jobs and approximately 86,000 indirect brick jobs in distribution, design, installation and related fields have been lost since the construction recession began in 2006. Because small companies comprise more than half of the industry, our recovery is particularly threatened by current rulemaking. The list below begins with two regulations currently being developed that will have the greatest industry-specific negative impact on jobs unless changes are made to the agencies' signaled approaches, followed by broader rules that will intensify the disproportionate regulatory burden the industry faces. As requested, we also list suggested reforms to the regulatory process.

#### **EPA Brick MACT Rulemaking**

Pursuant to the Clean Air Act (CAA) Amendments of 1990, the Environmental Protection Agency (EPA) is working on reissuing a Maximum Achievable Control Technology (MACT) rule for clay brick and tile in 2011/early 2012. EPA finalized the original Brick MACT in 2003 to regulate hydrogen fluoride (HF), hydrogen chloride (HCl), and particulate matter (PM) that might be produced when the mined raw materials (clay and shale containing natural minerals) are fired in kilns to make bricks. The industry spent over \$100 million to install and operate required control devices to meet the 2006 compliance date. In 2007, more than a year after states had been enforcing Brick MACT, the U.S. Court of Appeals for the D.C. Circuit vacated the rule and instructed EPA to more closely follow the CAA.

EPA now is developing a new Brick MACT that penalizes the industry for its previous good faith compliance. EPA is using the reduced emission levels from kilns with controls installed for the vacated rule to calculate a more stringent baseline for all kilns. In March 2010, EPA estimated the revised Brick MACT would cost the industry \$188 million per year. Based on data from the U.S. Census Bureau, brick manufacturers' total revenue in 2009 was approximately \$940 million. EPA's estimate results in an unsustainable 20 percent cost-to-sales ratio for this regulation alone. The outcome will be higher prices and lost jobs as some brick companies may be forced to close plants because they cannot afford or borrow the money required to replace existing controls or add newly mandated controls. BIA is urging EPA to include the following reasonable approaches in the

revised Brick MACT, as allowed under the CAA: exclude non-major sources when calculating the MACT floor for a category of "major" sources; base the MACT floor on emission limits that real-world best performing sources can actually achieve; exclude mined, mineral-based raw materials from the MACT limit evaluation; and include a health-based standard for pollutants that do not pose a risk because concentrations are below an established safe threshold.

### **OSHA Crystalline Silica Rulemaking**

The Occupational Safety and Health Administration (OSHA) is expected to propose a rule in 2011 on occupational exposure to crystalline silica to substantially decrease the Permissible Exposure Limit (PEL) across general industry. However, extensive scientific evidence demonstrates that the risks from exposure to silica from quartz in brick clays and shale are not the same as risks from quartz used in other industrial settings. Decades of studies indicate that silicosis caused by exposure to crystalline silica is essentially non-existent in brick industry workers. BIA is concerned that OSHA has undertaken the peer review process for the silica risk assessment document without providing an opportunity for input from potentially impacted industries to ensure that this brick-specific evidence is considered prior to the proposed rule.

The current crystalline silica PEL is amply protective of brick workers, and any reduction in the PEL for the brick industry would be unwarranted. The increased cost burden of new control requirements would provide no demonstrated health benefit for brick workers and jeopardize jobs. Based on a preponderance of evidence, OSHA should differentiate brick operations from other industries for the silica PEL. OSHA has the statutory authority to maintain the current crystalline silica PEL for brick manufacturing workers, even if OSHA reduces the PEL for industry in general.

### **EPA Greenhouse Gas Emission Regulations**

Like many other industries, brick manufacturing jobs will be impacted by EPA's regulation of greenhouse gas (GHG) emissions from stationary sources under the Clean Air Act's New Source Review (NSR) program. Although only the largest industrial sources are impacted by the GHG regulations that began on January 2, 2011, under EPA's NSR/Prevention of Significant Deterioration (PSD), the groundwork is set for smaller sources such as brick kilns to be regulated in the next few years. The brick industry could be quickly enveloped, resulting in lengthy permit review processes as states struggle to keep pace with the new permitting requirements. While EPA may ultimately require little or no change to brick operations, particularly because more than 80 percent of brick kilns are fired by natural gas, significant permitting delays will stifle job creation and the industry's recovery. EPA also has indicated its intent to begin regulation of GHG emissions from specific industrial categories under other sections of the CAA, e.g., Part 60 New Source Performance Standards (NSPS). While the brick industry is not the first industry for which NSPS and other rules will be developed, it is an energy-intensive industry that likely would be targeted soon.

### **EPA NAAQS Review of SO<sub>2</sub> and PM**

EPA is tightening all of the National Ambient Air Quality Standards (NAAQS) which set maximum allowable air concentrations of sulfur dioxide (SO<sub>2</sub>), particulate matter (PM), ozone, nitrogen dioxide, carbon monoxide and lead. BIA is concerned that EPA's approach could cause significant permitting issues for facilities that are considered "major" sources for each of these pollutants, as well as impact smaller brick kilns. In the past, state programs to address NAAQS levels were generally able to demonstrate that they could reach "attainment" levels by focusing on regulation of "major" sources. However, some of the reduced levels that EPA is considering, such as for SO<sub>2</sub>, are so close to current "background" levels that EPA's potential new standard could virtually



eliminate future job growth in certain states and regions. EPA also is changing how "attainment" with these standards is determined. Under the SO<sub>2</sub> NAAQS, an area could not certify that it is in "attainment" with the new levels if a computer model shows that there could be non-compliance, even when all existing actual monitors show the area to be in compliance with the new level.

#### **EPA Case-by Case MACT Regulations for States**

While EPA is redeveloping the federal Brick MACT rule, the agency also is currently finalizing regulations to modify the implementation of the case-by-case MACT review required under CAA § 112j. Once finalized, these regulations would require every major source facility within four source categories, including the brick industry, to conduct a case-by-case MACT analysis with the state's environmental division. The paperwork burden of developing individual permit applications to meet the requirements of specific states would be significant and unnecessary because EPA has acknowledged that the revised federal Brick MACT likely will be promulgated before any CAA § 112j permits would be issued. Once the federal Brick MACT rule is reissued and finalized, any CAA § 112j permits by states that are not finalized would not be completed. As BIA and other stakeholders noted in comments filed with EPA, EPA should not finalize these regulations because the agency is incorrectly interpreting that a rule's vacatur triggers CAA § 112j in the first place.

#### **OSHA Noise Proposal**

In October 2010, OSHA issued a notice for a new interpretation of economic feasibility relating to engineering and administrative controls for its current noise reduction standard, 29 CFR 1910.95. While the proposal is neither a proposed regulation nor standard and does not lower the threshold for employee noise exposure, it would be a dramatic change in long-standing OSHA enforcement policy. Currently OSHA allows employers to provide personal protective equipment (PPE) such as ear plugs and headphones if they are more cost-effective noise reducers than expensive engineering controls. OSHA plans to abandon this common-sense practice by requiring employers to implement all "feasible" controls regardless of costs (or the effectiveness of currently-used PPE) unless an employer can prove that making such changes would "put them out of business" or severely threaten the company's "viability." This reinterpretation of existing policy has the potential to be extremely subjective, disruptive and expensive, diverting resources away from job creation for no additional reduction in noise exposure. Although the original comment period has been extended to March 21, 2011, BIA is concerned that OSHA is not compelled to consider stakeholder feedback because it is attempting these changes outside the formal rulemaking process. This reinterpretation of policy is an example of federal government regulation without agency compliance with the full requirements of rule development and should not be allowed.

#### **Suggestions on Reforming Regulations and the Rulemaking Process**

##### **Consider Controls and Standards Required by Rules Vacated After the Compliance Date**

BIA encourages the Committee to explore possible legislation to prevent the negative economic impact that industries bear when a regulation is vacated by the courts *after* the compliance date. Brick MACT is an ideal example of why Congress should require agencies to 'grandfather' or give special consideration to controls, equipment, and work practices that were installed or undertaken to comply with a regulation that was subsequently vacated after the compliance date. Such a reform would avert considerable uncertainty and expense for companies and jobs when the regulatory goalposts are moved despite good faith compliance.

##### **Require Full and Formal Rulemaking Process**

Another helpful reform would require agencies to make guidance, interpretations, or proposed changes to standards or enforcement authority using the full rulemaking process. Formal

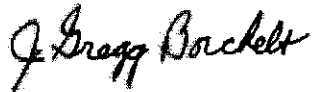
rulemaking compels public comment and review, as well as oversight by the Office of Management and Budget (OMB) to ensure maximum benefit per dollar invested to comply with regulations. BIA encourages Congress to examine ways to prevent agencies from regulating through backdoor "guidance," "interpretation" or "proposals" outside the formal process because such measures can create enormous burdens and be even more difficult to challenge legally.

Ensure Regulatory Costs are Reasonable

BIA also supports the goal of the REINS (Regulations from the Executive in Need of Scrutiny) Act, by Congressman Geoff Davis and Senator Jim DeMint. If Congress were required to pass a joint approval resolution for any regulation costing more than \$100 million, without inhibiting stakeholders' legal rights to challenge regulations, the regulatory burden from across agencies could be reduced. Congress also should consider adopting a second criterion to ensure that no regulatory requirement would cost the targeted industry more than five percent of its gross annual revenue without congressional approval. This reform would ensure that smaller, but still vital, industries cannot be regulated out of existence without oversight.

Thank you for your leadership and the opportunity to submit our concerns about the negative economic impact on brick jobs from existing and pending regulations. Because brick jobs are dependent on a still-recovering residential and commercial construction market, regulatory overload that further depletes limited resources is a critical industry issue. We look forward to providing additional details to you and your staff as the Committee undertakes its oversight work in the months ahead. Please let us know how we can be of further assistance.

Sincerely,

A handwritten signature in black ink, reading "J. Gregg Borchelt". The signature is written in a cursive, flowing style.

J. Gregg Borchelt  
President and Chief Executive Officer

Associated Industries of Florida  
CF Industries Holdings, Inc.  
Florida Farm Bureau  
Florida Water Quality Coalition

January 6, 2011

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

***Re: EPA Nutrient Rulemaking Poised to Stymie Job Growth in Florida***

Dear Chairman Issa:

We were pleased to learn of the Committee on Oversight and Government Reform's plans to examine existing and proposed regulations that negatively impact the economy and jobs. We ask that your evaluation include consideration of a critically important issue to Florida businesses, industry, agriculture, and local governments: the U.S. Environmental Protection Agency's (EPA's) unprecedented numeric nutrient (i.e., nitrogen and phosphorus) water quality standards rulemaking. As explained in this letter and the attached materials, this EPA rulemaking is an unwarranted federal takeover of the state's nutrient water quality program. This rule will choke job growth in Florida and Floridians need your help.

***Florida Cannot Afford this Litigation-Driven, Multibillion Dollar EPA Rulemaking***

EPA's decision to promulgate federal nutrient mandates for Florida's lakes, rivers, streams, and estuaries is in response to litigation initiated by environmental special interest groups. The schedule for imposing the federal standards was set by a bilateral settlement agreement between EPA and those environmental litigants. On August 2, 2010 a bipartisan letter from 21 members of the Florida Congressional Delegation requested that EPA delay this rulemaking schedule until the rulemaking's economic impacts and scientific underpinnings were reviewed independently.<sup>1</sup> EPA declined to honor that request<sup>2</sup> and, in accordance with its agreement with the environmental litigants, EPA finalized the first phase of its nutrient rules for Florida freshwaters on November 14, 2010. Phase two of the rulemaking for Florida's marine waters will conclude on August 15, 2012.

Although EPA refused to commission an independent review of its nutrient rulemaking, various Florida governmental and private entities have performed economic analyses. The results are astounding. One privately funded independent economic analysis concludes that in the "most likely scenario," the first phase of the EPA rulemaking will impose statewide costs

---

<sup>1</sup> Rep. Adam Putnam, et al, Letter to EPA Administrator Lisa Jackson (August 2, 2010).

<sup>2</sup> Pete Silva, Letter from EPA to the Florida Congressional Delegation (September 2, 2010); *see also*, FWEA Utility Council, Letter to Members of the Florida Delegation regarding EPA's Denial of Request for Review of its NNC Rule (October 7, 2010).

ranging from \$3.1 to \$8.4 billion per year for the next 30 years.<sup>3</sup> Another study by the Florida Department of Environmental Protection (FDEP) estimates that the EPA mandates will in part impose \$21 billion in capital costs on municipal wastewater treatment and storm water utilities.<sup>4</sup> And yet another study by the Florida Department of Agriculture and Consumer Services concludes that Florida's agricultural community will lose 14,545 full-time and part-time jobs and lose \$1.148 billion annually.<sup>5</sup> For the phosphate fertilizer industry alone, compliance with EPA's nutrient criteria is estimated to require \$1.6 billion in capital costs and \$59 million in annual operating and maintenance expenses.<sup>6</sup> Despite the economic projections of Florida professional economists and engineers, EPA internally calculated and published a total economic impact of \$135.5- \$206.1 million per year on the state's economy.<sup>7</sup> The EPA projection is over an order of magnitude lower than that provided to EPA by state experts. This disparity underscores the need for Congressional oversight of EPA's nutrient rulemaking.

Another factor supporting Congressional oversight is the precedent set by this nutrient rulemaking. Recent developments indicate that Florida is likely the first in a long line of states that will be subject to EPA nutrient rulemaking initiatives. In an August 2009 EPA publication, the agency identifies the promulgation of nutrient rules in various states as a national priority, and the document specifically identifies "EPA determinations to establish numeric standards in response to litigation" as an agency strategy for developing nutrient policies.<sup>8</sup> Apparently taking this cue, environmental groups have already filed notices of intent to sue EPA to force the establishment of similar nutrient rules in Kansas and Wisconsin.<sup>9</sup> This innovative approach by EPA of using special interest litigation to advance a regulatory agenda is the antithesis of how a transparent and fair regulatory process should be conducted.

#### *EPA's Litigation-Based Nutrient Rules are Divorced from Science and Disrupt Successful State Programs*

EPA's nutrient mandates are not only extraordinarily costly, but they also lack the sound scientific underpinnings necessary to create environmental benefits. EPA has continued to rely on a scientifically flawed methodology that is not site specific for Florida's waters. EPA's own Science Advisory Board has criticized EPA's method for developing rivers and streams nutrient standards.<sup>10</sup> The result is a set of standards that are well below reasonable and natural conditions

<sup>3</sup> Cardno-ENTRIX, *Economic Analysis of the Proposed Federal Numeric Nutrient Criteria for Florida* (Nov. 2010).

<sup>4</sup> Florida Department of Environmental Protection, *FDEP Review of EPA's "Preliminary Estimate of Potential Compliance Costs and Benefits Associated with EPA's Proposed Numeric Nutrient Criteria for Florida"* (April 2010); compare with FWEA Utility Council, *Costs for Utilities and their Ratepayers to Comply with EPA Numeric Nutrient Criteria for Freshwater Discharges* (November 1, 2010) (engineering analysis that calculates capital and operating costs projections for Florida's wastewater treatment utilities that are on par with FDEP's cost projections).

<sup>5</sup> Richard Budell, *Economic Impacts and Compliance Costs of Proposed EPA Water Quality Standards for the State of Florida's Lakes and Florida Waters*, FDACS (2010).

<sup>6</sup> Environ International Corporation, *Assessment of Financial Impact on Phosphate Mining and Mineral Processing: Complying with EPA's Proposed Nutrient Water Quality Standards for Florida* (April 2010).

<sup>7</sup> EPA, *Economic Analysis of Final Water Quality Standards for Nutrients for Lakes and Flowing Waters in Florida* (November 2010).

<sup>8</sup> State-EPA Nutrient Innovations Task Group, *An Urgent Call to Action: Report of the State-EPA Nutrient Innovations Task Group*, 30 (August 2009).

<sup>9</sup> The notices of intent to sue were filed on November 23, 2009 in Wisconsin and on June 2, 2010 in Kansas.

<sup>10</sup> EPA, Science Advisory Board, Processes and Effects Committee Advisory Report, *SAB Review of Empirical Approaches for Nutrient Criteria Derivation* (April 27, 2010).

for many water bodies in Florida which will require utilities, local governments, agriculture, and industry to attempt to reduce nutrient concentrations below needed -- and even natural -- conditions. In the words of former FDEP Secretary Mike Sole, "Compliance [with the standards] will force an investment of billions of dollars without environmental benefit."<sup>11</sup> The Florida Attorney General recently filed a lawsuit against EPA's new nutrient rules. This complaint similarly focuses on the absence of demonstrated environmental benefits and the rule's unwarranted disruption of successful state nutrient water quality programs.<sup>12</sup> The State of Florida's concerns are shared by numerous private and public entities and associations that filed extensive comments expressing concerns about the scientific validity and negative policy consequences of EPA's nutrient mandates.<sup>13</sup>

EPA thus far has ignored or discounted these concerns. Despite the voluminous public comments that were filed when the proposed rules were first announced, EPA's nutrient rules finalized in November 2010 look almost identical to EPA's initial rule proposals.

### *Florida Needs Your Help*

The threat this rulemaking presents to Florida cannot be overstated. These rules are poised to create regulatory barriers and avenues of litigation for a broad spectrum of job-creating projects. We respectfully ask that the Committee on Oversight and Government Reform use its oversight powers to examine this rule in detail. Among other things, EPA should explain to the Committee the purported urgency of its takeover of Florida's program; why EPA continues to use scientific methods that have been criticized by its own Science Advisory Board; why EPA calculated a compliance cost projection that assumes widespread variances and exceptions from its rule; why EPA acquiesced to the demands of special interest environmental litigants while discounting the input of other affected parties; and why this rulemaking could not be delayed to allow the independent review requested by Florida Congressional Delegation members.

We would be happy to provide further information on this rulemaking process. For further information, please do not hesitate to contact Rosemary O'Brien, Vice President, Public Affairs, CF Industries, at 1401 Eye Street N.W. Suite 340, Washington, D.C. 20005 (202) 371-9279 or [robrien@cfindustries.com](mailto:robrien@cfindustries.com).

Sincerely yours,

Barney Bishop, President, Associated Industries of Florida  
Stephen R. Wilson, Chairman, President & Chief Executive Officer, CF Industries Holdings, Inc.  
(a major Florida phosphate fertilizer producer)  
John Hoblick, President, Florida Farm Bureau  
Jim Spratt, President, Florida Water Quality Coalition

---

<sup>11</sup> FDEP Secretary Sole, Presentation before the Florida House Agriculture & Natural Resources Policy Committee, (Feb. 3, 2010).

<sup>12</sup> Florida Attorney General Bill McCollum, Press Release, *Florida Officials File Lawsuit Against EPA Over Federal Intrusion into State's Clean Water Program* (Dec. 7, 2010).

<sup>13</sup> See EPA, Docket Folder containing Technical Support Documents & Public Comments, available at <http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OW-2009-0596>.

cc: Florida Congressional Delegation  
Paul Steinbrecher, President, FWEA Utility Council

Enclosures: Rep. Adam Putnam, et al, Letter to EPA Administrator Lisa Jackson (August 2, 2010); Pete Silva, Letter from EPA to the Florida Congressional Delegation (September 2, 2010); FWEA Utility Council, Letter to Members of the Florida Delegation regarding EPA's Denial of Request for Review of its NNC Rule (October 7, 2010); Summary of Economic Findings; List of Entities Expressing Concerns Regarding EPA's Freshwater Nutrient Rule

attlemen's Association  
 hamber of Commerce  
 ida Citrus Mutual  
 s Processors Association  
 Group Environmental Committee  
 ry Products Association  
 rtment of Transportation  
 Ag and Consumer Services  
 Engineering Society  
 rm Bureau Federation  
 - & Agrichemical Association  
 ldlife Conservation Commission  
 Forestry Association  
 & Vegetable Association  
 mmental Utility Authority  
 ne Builders Association  
 ida Land Council  
 a League of Cities  
 als and Chemistry Council  
 wers and Landscape Association  
 Management Association  
 Poultry Federation  
 and Paper Association  
 ormwater Association  
 berry Growers Association  
 Sugar Cane League  
 urf Grass Association  
 vironment Association Reuse  
 Committee  
 nment Association Utility Council  
 ater Quality Coalition  
 ndustry, Jobs, and Growth  
 ers Association of Florida  
 rowers Cooperative of FL  
 teReuse Florida

Boca Raton	Green Cove Springs	Miami	Satellite Beach
Bonita Springs	Hollywood Public	Naples City Council	St. Cloud
Utilities	Utilities Dept	Northport	St. Petersburg
Casselberry	Jacksonville	Orlando Utilities	Sunrise
Clearwater City	Kissimmee	Commission	Tallahassee
Council	Lakeland	Orlando	Tampa
Clearwater	Lakeland Div of	Wastewater	Tarpon Springs
Stormwater	Lakes & Stormwater	Division	Titusville
Eng Dept	of the Dept of	Palm Bay	Winter Haven
Cocoa	Public Works	Utilities Dept	

### Regional Associations:

Lake Okeechobee Regional Economic Alliance Chamber of Commerce of Southwest Florida Farm Credit of Southwest Florida Alliance of Delray Residential Associations Coalition of Boynton West Residential Associations Pine Grove Village Board of Directors Riverbend Homeowner's Association San Marco Homeowner's Association Southern Dr. Phillips Homeowner's Coalition	Westchester Master Association Okeechobee Area Agri-Council Citizens for Constitutional Property Rights Florida Lake Watch at UF Gulf Citrus Growers Association Indian River Citrus League North Florida Growers Exchange Peace River Valley Citrus Growers Association Northwest Florida Utility Managers Council Southeast Florida Utility Council	Treasure Coast Regional Planning Council Southwest Florida Regional Planning Council Seminole Tribe of Florida East Central Regional Water Reclamation Facility Harris Chain of Lakes Restoration Council St. Marys River Management Committee Hillsborough River Watershed Alliance Tampa Bay Nitrogen Management Consortium Niceville-Valparaiso-Okaloosa County Regional Sewer Board
--	--	--

### Florida Special Districts:

al District Water ict Association Authority je District ge District s Authority il Area EPD and Water ict ion District t Authority	Highlands Soil and Water Conservation District Joshua Water Control District Lake Worth Drainage District Loxahatchee Groves Water Control District Loxahatchee River District Northwest Florida Water Management District Orange County EPD Palm Beach County Soil & Water Conservation District	Peace River Manasota Regional Water Supply Authority Plantation Acres Improvement District Sarasota Bay Estuary Program Sebastian River Water Control District South Broward Drainage District South Florida Water Management District South Indian River Water Control District	Southwest Florida Water Management District St. Johns Improvement District St. Johns River Water Management District Suwannee River Water Management District Tampa Bay Estuary Program Tampa Port Authority Tindall Hammock Irrigation and Soil Conservation District Tohopekalgia Water Authority
--	--	---	--

Clay County Board of Commissioners  
 Clay County Farm Bureau  
 Citizens of Charlotte County Farm Bureau  
 Collier County  
 Desoto County Board of Commissioners  
 Duval County Farm Bureau  
 Hernando County Utilities Dept  
 Highlands County  
 Hillsborough County  
 Hillsborough County EPC  
 Hillsborough County Public Works Dept  
 Hillsborough County Water Resource  
 Services  
 Jackson County Farm Bureau  
 Lee County  
 Lee County Division of Natural Resources  
 Lee County Board of Commissioners  
 Manatee County  
 Manatee Chamber of Commerce  
 Marion County  
 Miami-Dade DERM  
 Okaloosa County Board of  
 Commissioners  
 Okaloosa County Water & Sewer  
 System  
 Orange County Public Works Dept  
 Orange County Utilities  
 Osceola County  
 Palm Beach County  
 Palm Beach County League of Cities  
 Palm Beach County NPDES  
 Pasco County  
 Pinellas County  
 Pinellas County Dept of Environmental  
 Management  
 Pinellas County Utilities  
 Putnam County Chamber of Commerce  
 Polk County  
 Sarasota County  
 Seminole County  
 Seminole County Public Works  
 St. Johns County  
 St. Lucie County  
 Sumter County  
 Volusia County  
 Walton County Farm Bureau  
 Washington County Farm Bureau  
 Washington County Cattleman's  
 Association

Becker Holding  
 Corporation  
 Bright Hour Ranch  
 Buckeye Florida  
 Carroll Brothers Nursery  
 Certi-Fine Fruit  
 CI Groves  
 Clint Nurseries  
 of Florida  
 Collier Enterprises  
 Consolidated Citrus  
 Davie Dairy  
 DCR Services  
 Delray Plants  
 Deseret Farms of Ruskin  
 Destin Water Users  
 Eastern Associated  
 Terminals Company  
 Fellsmere Farms  
 Florida Power and  
 Light Company  
 Gilkey Organization  
 H & H Sod Company  
 Hackney Nursery  
 Highland  
 Greenhouses  
 JEA

### National Com

AbitibiBowater  
 Alcoa  
 CF Industries  
 CH2M HILL  
 Coeur D'Alene  
 Mines Corporation  
 Freeport-McMoRan  
 Copper & Gold  
 General Electric  
 Company  
 Georgia-Pacific  
 Glatfelter  
 GROWMARK  
 Gulf Power  
 Company  
 Hecla Mining Company  
 HSA Engineers  
 and Scientists

### National Organizations:

Association ironmental nent er Council Manufacturers y Council al Chemicals u Federation	Association of Metropolitan Water Agencies ASIWPCA Orange County, California, Sanitation District Sanitation Districts of Los Angeles County City of San Bernardino, California Edison Electric Institute	The Georgia Paper and Forest Products Association Illinois Fertilizer & Chemical Association Indiana Coal Council Indiana Plant Food & Ag Chem Association Irrigation Association Kansas Agribusiness Retailers	Minnesota Environmental Science and Economic Review Board Missouri Agribusiness Association National Association of Clean Water Agencies National Association of Home Builders National Association of Industrial and Office Properties	National Mining Association National Pork Producers Council National Potato Council Nebraska Agri-Business Association New England Interstate Water Pollution Control Commission New York State North Carolina Division of Water Quality Packaging Corporation of America	Southern Crop Pr The Fertil Tri United Eg United States United States Utility Wat Virginia Agrib
---	---	--	--	---	---



# **FWEA Utility Council**

***Protecting Florida's Clean Water Environment***  
P.O. Box 10755 • Tallahassee, Florida 32302 • (850) 425-3428  
[www.fweauc.org](http://www.fweauc.org)

October 7, 2010

Members of the Florida Delegation  
United States Senate & United States House of Representatives  
Washington, D.C.

***RE: EPA's Denial of the Florida Congressional Delegation Members' Request for  
Independent Scientific and Economic Review of its Numeric Nutrient Criteria Rule***

Dear Senators and Representatives:

The Florida Water Environment Association (FWEA) Utility Council appreciates the opportunity to provide this letter regarding the U.S. Environmental Protection Agency's (EPA's) decision not to commission an independent scientific or economic review of its proposed numeric nutrient criteria rule now scheduled to be finalized on November 14, 2010. By way of background, the FWEA Utility Council is an association of 66 local government and private utilities in Florida that own and operate domestic wastewater treatment, disposal, reuse, and recycling facilities, serving 8 million Floridians. The core mission of our utility members is to protect the public health and the environment by safely collecting and treating domestic wastewater, and beneficially reusing it or safely returning it to the environment. Our utility members and the Floridians we serve stand to be significantly impacted by EPA's pending finalization of its numeric nutrient criteria rule for Florida's lakes, rivers, streams, and springs. We ask that you continue to demand that EPA conduct a meaningful scientific and economic review of this unprecedented rulemaking.

*EPA should not have denied the bipartisan request for a scientific and economic review of its rulemaking*

As you know, on August 2, 2010, twenty-one members of the Florida Congressional Delegation sent a letter to EPA Administrator Lisa Jackson urging her to delay finalizing EPA's proposed numeric nutrient criteria rule until EPA could subject its proposed rule to a thorough scientific and economic review. The Delegation members made this bipartisan request, because EPA's rulemaking is unprecedented and projected to dramatically impact Florida's economy. In this context, it is essential to ensure that the standards will create meaningful environmental benefits and that the costs are well-understood. In a letter dated September 2, 2010, EPA Assistant Administrator Peter Silva denied this request. The FWEA Utility Council is disappointed by EPA's denial and the confusing manner in which EPA communicated its decision. Most



disconcerting is that the EPA letter creates the incorrect impression that the Florida Congressional Delegation members had asked EPA to do something the agency had already done or was doing. That is simply not true.

*EPA's numeric nutrient criteria rule for Florida's lakes, rivers, streams, and springs has never been scientifically peer reviewed*

The Delegation members' letter requested a scientific review by the Science Advisory Board (SAB) of EPA's proposed numeric nutrient rule -- both the criteria and the underlying derivation methodologies -- to determine whether the proposed standards reflect a cause and effect relationship between nutrients and biological harm, and importantly, the Delegation letter asked EPA to consider such independent review prior to deciding whether to finalize its proposed rule. Again, the Delegation members made the request because EPA has never conducted such a review. Two review actions were cited by EPA in its September 2nd response, and both fall far short of the review requested by Delegation members.

The so-called "peer review comments" cited by EPA involved an unstructured assortment of anonymous comments regarding an early technical support document for Florida's proposed nutrient criteria rule. Importantly, those ad hoc comments did not include any consideration of the reasonableness or effectiveness of the criteria ultimately derived and proposed by EPA. While such limited, non-transparent review is acknowledged as a review of sorts in EPA's Peer Review Handbook, it is the lowest level of review available and is obviously inadequate for an unprecedented rulemaking of this magnitude.

The other review cited by EPA is the SAB's review of EPA's general nutrient criteria development guidance document. This SAB review did not consider EPA's proposed numeric nutrient criteria for Florida. Rather, the April 2010 SAB review document considered -- and criticized -- EPA's statistical nutrient criteria development methods, because the methods were not based on cause and effect relationships between nutrients and biological harm. EPA admitted in January 2010 that its proposed rivers and streams standards were based on statistical assumptions, not cause and effect relationships, and EPA did not correct this fundamental problem when it released alternative proposed standards in August 2010 (four months after the SAB review now cited by EPA). So, on the one hand, EPA is touting the indirect limited SAB review that did occur, and on the other hand, EPA is declining to acknowledge that the review resulted in criticism of its methodology. As the Delegation members correctly noted in their letter to EPA, "a peer review process is only meaningful if the agency is prepared to be responsive to the comments of independent experts." The facts demonstrate that EPA has not engaged in any meaningful peer review of its proposed numeric nutrient criteria rule; instead, EPA has been dismissive of the indirect SAB review that did occur.

*EPA must commission an independent economic review that considers the substantial regulatory consequences of the rule*

In addition to refusing to come to terms with the significant scientific flaws of its proposed rule, EPA has not conceded the proposed rule's extraordinary compliance costs. The Florida Department of Environmental Protection (FDEP) conducted an analysis indicating that the

criteria set to be finalized on October 15, 2010 will impose \$4.167 billion in capital costs on Florida's domestic wastewater treatment utilities. EPA, however, estimated that its rule would impose only \$52 million of capital costs for domestic wastewater treatment utilities. Thus, FDEP's capital cost projections for domestic wastewater treatment utilities alone is over 80 times higher than the EPA estimate. EPA and FDEP's cost projections -- for agriculture and other key economic sectors of Florida -- are similarly disparate. These extreme disparities demonstrate the pressing need for an independent economic analysis. Florida is the only state subject to EPA's unprecedented nutrient criteria, and Floridians deserve clear and consistent answers regarding the economic implications.

*Floridians deserve regulatory policy based on sound science with well-understood costs*

The FWEA Utility Council appreciates the efforts of the Florida Congressional Delegation to interject commonsense into this EPA rulemaking. Unfortunately, EPA is poised to finalize its numeric nutrient criteria rule on November 14 without conducting the scientific and economic review of the rule requested by twenty-one members of the Florida Congressional Delegation in their letter dated August 2, 2010. The September 2, 2010 letter from Peter Silva creates the impression that EPA has responded to the bipartisan request when fact they have not.<sup>1</sup> These federal standards are the result of litigation. They are unprecedented. They are not peer-reviewed. The environmental benefits are questionable. And the projected economic impacts are staggering, particularly at a time when Florida's unemployment rate is 11.7 percent. We ask that you please continue to demand that EPA conduct a thorough independent scientific and economic peer review of this proposed rule and to modify its rulemaking in accordance with the outcome of the analysis.

Kind Regards,



Paul Steinbrecher  
FWEA Utility Council President

Encl: Letter from Florida Congressional Delegation Members to EPA (Aug. 2, 2010)  
Letter in Response from Peter Silva to the Florida Congressional Delegation (Sept. 2, 2010)

---

<sup>1</sup> EPA has not signaled that it will use its most recent 30-day extension for finalizing the freshwater criteria to conduct any of the independent scientific and economic review requested by the Florida Congressional Delegation members. Instead, EPA's press release announcing the 30-day delay included EPA's conclusion that the proposed rule is "cost-effective" and needed to prevent "toxic microbes that can cause damage to the nervous system or even death; and from byproducts in drinking water from disinfection chemicals, some of which have been linked with serious human illnesses like bladder cancer." EPA's unsubstantiated and sensationalistic rhetoric demonstrates the need for third party review of EPA's proposed rulemaking.

**Congress of the United States**  
**Washington, DC 20515**

August 2, 2010

The Honorable Lisa Jackson  
Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson,

As you know, the Environmental Protection Agency (EPA) has issued a proposed rule establishing federal numeric nutrient criteria for Florida water bodies. In accordance with a consent decree EPA entered into with several litigants, EPA committed to issue a final rule for Florida lakes and streams by October 2010 and for Florida canals, coastal waters, and estuaries by August 2012.

EPA's numeric nutrient criteria rulemaking will impact all Florida citizens, local governments, and vital sectors of Florida's economy, including agriculture. It is thus imperative that EPA ensure that its federal criteria are based on sound scientific rationale; necessary to protect the applicable designated uses of Florida waters; and reflective of the range of natural variability associated with state waters.


To that end, we applaud EPA's decision to delay finalization of criteria for Florida's canals, coastal waters, and estuaries to August 2012 to allow EPA's Science Advisory Board (SAB) to conduct a peer review of EPA's data and methodologies for deriving criteria for these waters. It is our expectation that the SAB's peer review will consider the appropriateness of the numerical limits proposed for canals, estuaries, and coastal waters and analyze whether the proposed criteria are sufficiently based on or correlated with cause and effect relationships between nutrients and biological responses in these Florida waters. Also, because a peer review process is only meaningful if the agency is prepared to be responsive to the comments of independent experts, we expect that EPA will modify its rulemaking in accordance with the SAB's analysis and recommendations.

In addition to reviewing the proposed criteria for Florida's canals, estuaries, and coastal waters, we strongly urge that EPA extend the scope of its SAB peer review to include examination of the proposed numeric nutrient criteria and underlying derivation methodologies for Florida's rivers, streams, and lakes. We believe that the SAB peer review process is important, and it should apply to all of the criteria to be imposed in Florida, not just criteria for canals, coastal waters, and estuaries. We strongly urge that EPA delay requirements to implement its proposed streams and lakes criteria until the peer review concludes, and EPA should adjust its rulemaking in accordance with the peer review analysis and recommendations.


Lastly, we strongly urge that EPA provide for an independent analysis to assess the economic impact of the proposed rule on Florida and adjoining states. The assessments should consider economic information submitted by Florida governmental entities and the public in EPA's rulemaking process; compare the proposed rule to current law in Florida; and account for the potential need to retrofit pollutant reduction measures taken in response to TMDLs and estuary programs for nutrients in Florida.

Again, EPA's unprecedented nutrient criteria rulemaking appears poised to impose substantial regulatory and economic consequences on Floridians. We ask that prior to deciding whether to implement numeric nutrient criteria, you ensure that all aspects of EPA's rulemaking are based on a sound scientific rationale and that the costs and potential unintended consequences associated with the rule are well understood.


Sincerely,



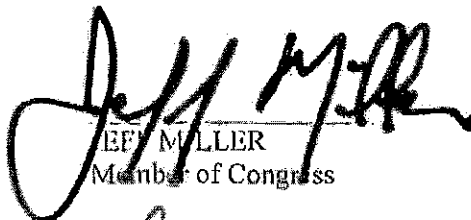
ADAM H. PUTNAM  
Member of Congress




TOM ROONEY  
Member of Congress




GEORGE LEMIEUX  
United States Senator




JEFF MILLER  
Member of Congress




ALLEN BOYD  
Member of Congress




CORRINE BROWN  
Member of Congress



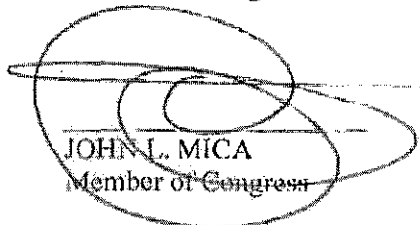
ANDER CRENSHAW  
Member of Congress



GINNY BROWN-WAITE  
Member of Congress




CLIFF HEARN  
Member of Congress



JOHN L. MICA  
Member of Congress



GUS M. BILIRAKIS  
Member of Congress



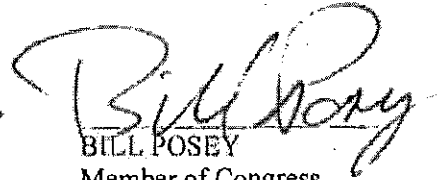
C.W. BILL YOUNG  
Member of Congress



VERN BUCHANAN  
Member of Congress



CONNIE MACK  
Member of Congress



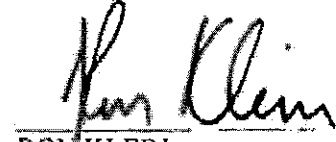
BILL POSEY  
Member of Congress



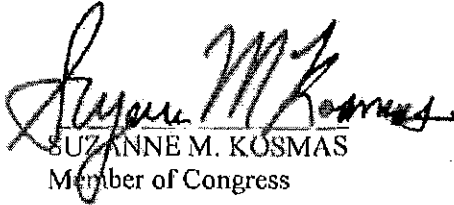
ILEANA ROS-LEHTINEN  
Member of Congress



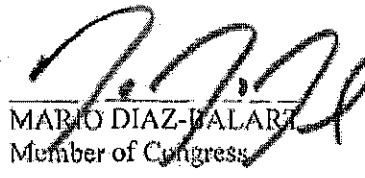
LINCOLN DIAZ-BALART  
Member of Congress



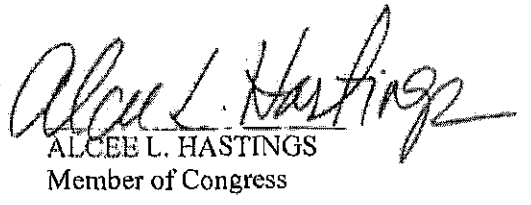
RON KLEIN  
Member of Congress



SUZANNE M. KOSMAS  
Member of Congress



MARIO DIAZ-BALART  
Member of Congress



ALCEE L. HASTINGS  
Member of Congress



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP - 2 2010

OFFICE OF  
WATER

The Honorable Tom Rooney  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Rooney:

Thank you for your letter of August 2, 2010, to Administrator Lisa P. Jackson, regarding the Environmental Protection Agency's (EPA) proposed rule to establish numeric nutrient criteria for Florida's lakes and flowing waters. This rule is intended to protect human health, aquatic life, and recreational uses of Florida's waters, a critical part of the State's economy. In your letter, you request that EPA: 1) ensure its federal criteria are based on sound scientific rationale, necessary to protect the applicable designated uses of Florida waters, and reflective of the range of natural variability associated with State waters; 2) expand the scope of EPA's Scientific Advisory Board (SAB) review to include EPA's proposed numeric nutrient criteria for Florida's rivers, streams, and lakes; and 3) provide for an independent analysis to assess the economic impact of the proposed rule on Florida and adjoining states. EPA recognizes the concerns expressed by the Florida Congressional Delegation and is committed to ensuring that the federal criteria resulting from this regulatory process are consistent with the requirements of Section 303(c) of the Clean Water Act and EPA's implementing regulations at 40 CFR Part 131.

As you are aware, we have extended the deadlines for promulgating numeric nutrient criteria for Florida's estuaries, flowing waters in South Florida (including canals), and the downstream protection values for flowing waters into estuaries. The new deadline for proposing the criteria is November 14, 2011, and August 15, 2012, is the deadline for promulgating a final rule. This will allow EPA to hold a public peer review by EPA's SAB of the scientific methodologies for these criteria.

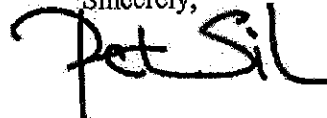
The underlying methodologies for the Agency's proposed numeric nutrient criteria for Florida's rivers, streams, and lakes, also underwent scientific peer review. First, the SAB reviewed EPA's draft technical guidance on *Empirical Approaches for Numeric Nutrient Criteria Derivation*. The SAB's peer review report was provided to EPA in draft form in November 2009 and in final form in April 2010. EPA has considered these peer review comments in this rulemaking. In addition, EPA followed the procedures outlined in its Peer Review Handbook (EPA/100/B-06/002) by having the methods EPA used in its proposal reviewed by an independent, external peer review panel. This independent, external peer review was completed in July 2009 and the results were made available through EPA's docket for the

proposed Florida nutrients rule (*Peer Review Comments Final: External Peer Review of EPA's Proposed Methods and Approaches for Developing Numeric Nutrient Criteria for Florida's Inland Waters*, EPA-HQ-OW-2009-0596-0010). EPA considered and responded to these peer review comments prior to proposal in January 2010 (*EPA Responses to External Peer Review of EPA*, EPA-HQ-OW-2009-0596-0155). We believe the comments provided by the SAB on the *Empirical Approaches for Numeric Nutrient Criteria Derivation*, coupled with the external peer review panel, ensure that the criteria developed have a strong scientific basis.

Regarding an independent analysis to assess the economic impact of the proposed rule on Florida and adjoining states, EPA does not foresee the need to provide for an independent analysis. EPA conducted an analysis of the potential economic impact of the rule on entities in Florida and is in the process of revising and refining that analysis based on comments, data, and information submitted by many stakeholder groups in Florida including Florida's Agriculture and Environmental Agencies, as well as members of the public. This information will be included in the economic analysis accompanying EPA's final rule in October 2010. Economic information pertaining to the impact of EPA's numeric nutrient criteria on estuary programs will be addressed in EPA's rulemaking for coastal and estuarine waters, downstream protection of estuaries, and flowing waters in South Florida, to follow in November 2011 as a proposal, and August 2012 as final.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Denis Borum in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4836.

Sincerely,

A handwritten signature in black ink, appearing to read "Pet Silva", written over a horizontal line.

Peter S. Silva  
Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP - 2 2010

OFFICE OF  
WATER

The Honorable Tom Rooney  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Rooney:

Thank you for your letter of August 2, 2010, to Administrator Lisa P. Jackson, regarding the Environmental Protection Agency's (EPA) proposed rule to establish numeric nutrient criteria for Florida's lakes and flowing waters. This rule is intended to protect human health, aquatic life, and recreational uses of Florida's waters, a critical part of the State's economy. In your letter, you request that EPA: 1) ensure its federal criteria are based on sound scientific rationale, necessary to protect the applicable designated uses of Florida waters, and reflective of the range of natural variability associated with State waters; 2) expand the scope of EPA's Scientific Advisory Board (SAB) review to include EPA's proposed numeric nutrient criteria for Florida's rivers, streams, and lakes; and 3) provide for an independent analysis to assess the economic impact of the proposed rule on Florida and adjoining states. EPA recognizes the concerns expressed by the Florida Congressional Delegation and is committed to ensuring that the federal criteria resulting from this regulatory process are consistent with the requirements of Section 303(c) of the Clean Water Act and EPA's implementing regulations at 40 CFR Part 131.

As you are aware, we have extended the deadlines for promulgating numeric nutrient criteria for Florida's estuaries, flowing waters in South Florida (including canals), and the downstream protection values for flowing waters into estuaries. The new deadline for proposing the criteria is November 14, 2011, and August 15, 2012, is the deadline for promulgating a final rule. This will allow EPA to hold a public peer review by EPA's SAB of the scientific methodologies for these criteria.

The underlying methodologies for the Agency's proposed numeric nutrient criteria for Florida's rivers, streams, and lakes, also underwent scientific peer review. First, the SAB reviewed EPA's draft technical guidance on *Empirical Approaches for Numeric Nutrient Criteria Derivation*. The SAB's peer review report was provided to EPA in draft form in November 2009 and in final form in April 2010. EPA has considered these peer review comments in this rulemaking. In addition, EPA followed the procedures outlined in its Peer Review Handbook (EPA/100/B-06/002) by having the methods EPA used in its proposal reviewed by an independent, external peer review panel. This independent, external peer review was completed in July 2009 and the results were made available through EPA's docket for the

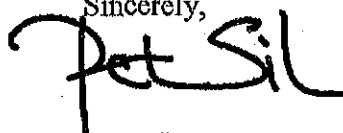


proposed Florida nutrients rule (*Peer Review Comments Final: External Peer Review of EPA's Proposed Methods and Approaches for Developing Numeric Nutrient Criteria for Florida's Inland Waters*, EPA-HQ-OW-2009-0596-0010). EPA considered and responded to these peer review comments prior to proposal in January 2010 (*EPA Responses to External Peer Review of EPA*, EPA-HQ-OW-2009-0596-0155). We believe the comments provided by the SAB on the *Empirical Approaches for Numeric Nutrient Criteria Derivation*, coupled with the external peer review panel, ensure that the criteria developed have a strong scientific basis.

Regarding an independent analysis to assess the economic impact of the proposed rule on Florida and adjoining states, EPA does not foresee the need to provide for an independent analysis. EPA conducted an analysis of the potential economic impact of the rule on entities in Florida and is in the process of revising and refining that analysis based on comments, data, and information submitted by many stakeholder groups in Florida including Florida's Agriculture and Environmental Agencies, as well as members of the public. This information will be included in the economic analysis accompanying EPA's final rule in October 2010. Economic information pertaining to the impact of EPA's numeric nutrient criteria on estuary programs will be addressed in EPA's rulemaking for coastal and estuarine waters, downstream protection of estuaries, and flowing waters in South Florida, to follow in November 2011 as a proposal, and August 2012 as final.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Denis Borum in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-4836.

Sincerely,

A handwritten signature in black ink, appearing to read "Pet Silva", written over a horizontal line.

Peter S. Silva  
Assistant Administrator

**Congress of the United States**  
**Washington, DC 20515**

August 2, 2010

The Honorable Lisa Jackson  
Administrator  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson,

As you know, the Environmental Protection Agency (EPA) has issued a proposed rule establishing federal numeric nutrient criteria for Florida water bodies. In accordance with a consent decree EPA entered into with several litigants, EPA committed to issue a final rule for Florida lakes and streams by October 2010 and for Florida canals, coastal waters, and estuaries by August 2012.

EPA's numeric nutrient criteria rulemaking will impact all Florida citizens, local governments, and vital sectors of Florida's economy, including agriculture. It is thus imperative that EPA ensure that its federal criteria are based on sound scientific rationale; necessary to protect the applicable designated uses of Florida waters; and reflective of the range of natural variability associated with state waters.


To that end, we applaud EPA's decision to delay finalization of criteria for Florida's canals, coastal waters, and estuaries to August 2012 to allow EPA's Science Advisory Board (SAB) to conduct a peer review of EPA's data and methodologies for deriving criteria for these waters. It is our expectation that the SAB's peer review will consider the appropriateness of the numerical limits proposed for canals, estuaries, and coastal waters and analyze whether the proposed criteria are sufficiently based on or correlated with cause and effect relationships between nutrients and biological responses in these Florida waters. Also, because a peer review process is only meaningful if the agency is prepared to be responsive to the comments of independent experts, we expect that EPA will modify its rulemaking in accordance with the SAB's analysis and recommendations.

In addition to reviewing the proposed criteria for Florida's canals, estuaries, and coastal waters, we strongly urge that EPA extend the scope of its SAB peer review to include examination of the proposed numeric nutrient criteria and underlying derivation methodologies for Florida's rivers, streams, and lakes. We believe that the SAB peer review process is important, and it should apply to all of the criteria to be imposed in Florida, not just criteria for canals, coastal waters, and estuaries. We strongly urge that EPA delay requirements to implement its proposed streams and lakes criteria until the peer review concludes, and EPA should adjust its rulemaking in accordance with the peer review analysis and recommendations.


Lastly, we strongly urge that EPA provide for an independent analysis to assess the economic impact of the proposed rule on Florida and adjoining states. The assessments should consider economic information submitted by Florida governmental entities and the public in EPA's rulemaking process; compare the proposed rule to current law in Florida; and account for the potential need to retrofit pollutant reduction measures taken in response to TMDLs and estuary programs for nutrients in Florida.

Again, EPA's unprecedented nutrient criteria rulemaking appears poised to impose substantial regulatory and economic consequences on Floridians. We ask that prior to deciding whether to implement numeric nutrient criteria, you ensure that all aspects of EPA's rulemaking are based on a sound scientific rationale and that the costs and potential unintended consequences associated with the rule are well understood.


Sincerely,



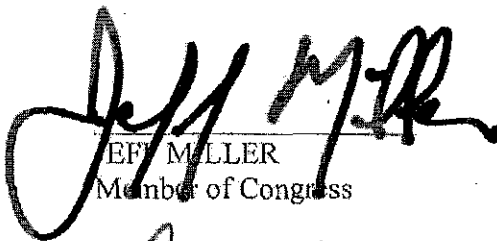
ADAM H. PUTNAM  
Member of Congress




TOM ROONEY  
Member of Congress



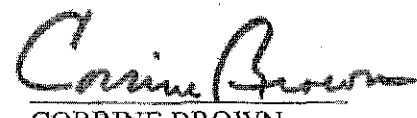
GEORGE LEMIEUX  
United States Senator



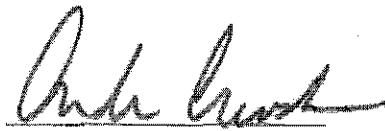
JEFF MILLER  
Member of Congress



ALLEN BOYD  
Member of Congress




CORRINE BROWN  
Member of Congress



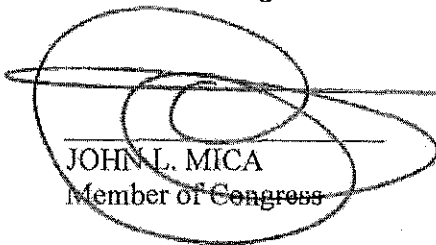
ANDER CRENSHAW  
Member of Congress




GINNY BROWN-WAITE  
Member of Congress




CLIFF STEARNS  
Member of Congress



JOHN L. MICA  
Member of Congress



GUS M. BILIRAKIS  
Member of Congress



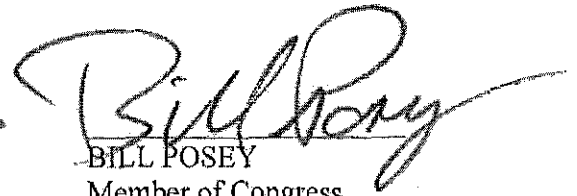
C.W. BILL YOUNG  
Member of Congress



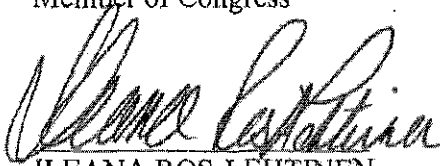
VERN BUCHANAN  
Member of Congress



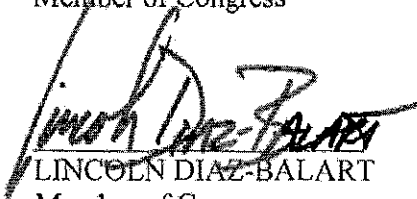
CONNIE MACK  
Member of Congress



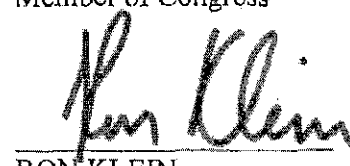
BILL POSEY  
Member of Congress



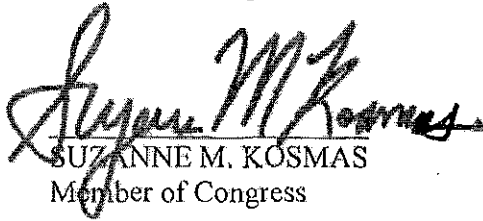
ILEANA ROS-LEHTINEN  
Member of Congress



LINCOLN DIAZ-BALART  
Member of Congress



RON KLEIN  
Member of Congress



SUZANNE M. KOSMAS  
Member of Congress



MARIO DIAZ-BALART  
Member of Congress



ALCEE L. HASTINGS  
Member of Congress

# **EPA Numeric Nutrient Criteria Rulemaking**

## **Economic Consequences for Floridians<sup>1</sup>**

### **EPA<sup>2</sup>**

Total Projected Annual Cost for Compliance with Rivers, Streams, and Lakes Criteria: **\$135.5-\$206.1 Million**

### **Florida Department of Environmental Protection**

Total Projected Annual Cost for Compliance with Rivers, Streams, and Lakes Criteria: **\$5.7-\$8.4 Billion/year**

Total Projected Capital Cost for Compliance with Rivers, Streams, and Lakes Criteria: **\$61.6-\$78.8 Billion**

Total Projected Cost per Household for Compliance with Rivers, Streams, and Lakes Criteria: **\$657-\$962/year**

### **Statewide Costs (Cardno-ENTRIX)**

Total Projected Annual Cost Compliance Costs for Rivers, Streams, and Lakes Criteria: **\$3.1-\$8.4 Billion/year**

### **Domestic Wastewater Treatment Utilities**

FDEP Total Utility Capital Cost for Compliance with Rivers, Streams, and Lakes Criteria: **\$4.167 Billion**

FDEP Total Operating Cost for Compliance with Rivers, Streams, and Lakes Criteria: **\$185 Million**

FWEA Cost for All Criteria over 30 Years: **\$47.6-\$98.7 Billion**

FWEA Utility Bill Increase per Household: **\$673-\$726/year**

### **Florida Local Governments**

Capital Cost for Compliance with Rivers, Streams, and Lakes Criteria: **Over \$75 Billion**

### **Florida Citrus**

Capital Cost for Compliance: **\$325 Million**

Annual Cost for Compliance: **Over \$100 Million**

### **Florida Dairy**

Capital Cost for Compliance: **\$222.8 Million**

Annual Cost for Compliance: **\$70.8 Million**

### **Agricultural Industry**

Total Initial Cost for Compliance: **\$855 Million to \$3.069 Billion**

Total Annual Cost for Compliance: **\$902 Million to \$1.605 Billion**

Annual Impact on Florida's Economy: **\$1.148 Billion**

Loss of Full-Time and Part-Time Jobs: **14,545**

### **Florida Sugar Cane**

Capital Cost for Compliance: **\$150 Million**

Annual Cost for Compliance: **\$50 Million**

### **Fertilizer Industry**

Capital Cost for Compliance: **\$1.35 Billion**

Annual Cost for Compliance: **\$40 Million**

### **Phosphate Industry**

Capital Cost for Compliance: **\$1.6 Billion**

Annual Cost for Compliance: **\$59 Million**

### **Florida Pulp & Paper Association Mills**

Capital Cost for Compliance: **Over \$288 Million**

Annual Cost for Compliance: **\$169 Million**

<sup>1</sup> EPA finalized its proposed criteria for rivers, streams, springs, and lakes on November 14, 2010. EPA will finalize criteria for Florida's estuaries, canals, and coastal waters on August 15, 2012.

<sup>2</sup> EPA cost projections assume that FDEP has already adopted numeric nutrient criteria. However, FDEP has **NOT** adopted numeric nutrient criteria. FDEP abandoned its nutrient criteria development when EPA settled its nutrient criteria litigation with environmental litigants. EPA's and all other cost projections are available on EPA's public docket.



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

Att: Kristina Moore

Dear Congressman Issa:

I have in hand your 12/29/10, letter directed to Mr. Timothy Farrell of  
The American Hardware Manufacturers Association...for response to your inquiry asking for  
identification of existing and proposed regulations that impact job growth in the U.S.

I am responding to you directly and copying Mr. Farrell due to the very short time you have  
allowed for response (you want responses in hand by 1/10!).

Channellock, Inc is a family owned, 125 year old manufacturer (yes, manufacturer, one of the  
few left!) of high quality pliers and hand tools. We are located in Meadville, Pa and employ  
about 400 people. Many of our folks are represented by The United Steelworkers of America  
and have been since 1935. We have never missed a payroll, always paid our taxes and are, I  
would like to think, what our government would like more of...makers of products that are sold  
globally. It sure does not currently feel that way.

You ask for inputs on existing and proposed regs that stifle job creation:

### **Existing regs...**

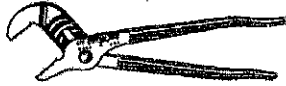
1) IRS Tax Code. Draconic. Ambiguous. Confusing. Flawed. We spend too much time trying  
to meet the intent of the code. CPA's, Auditors cannot decipher/define/understand this monster.  
It is philosophically flawed. It rewards consumption and penalizes production, productivity, and  
success. (Capital Gains Taxes, Estate Taxes, Dividend Taxes, Corporate Income Taxes, etc.)  
This code needs to be abolished. Replaced with national sales tax.  
That would reward success, production, productivity and tax consumption.

2) Obama Care...Bad Law. We have a private medical care program at Channellock. Our  
associates participate in the cost. We like it. Can, so far, afford it. Do not want this nationalized  
health care program, period! Repeal it. Under Obama Care we have no idea what the future is

William S. DeArment, President & Chief Executive Officer  
CHANNELLOCK, INC. 1306 South Main Street, Meadville, Pa. 16335-0519  
Phone: 814-724-8700, ext. 213 Fax: 814-337-0685

1/7/2011 11:53 AM

# CHANNEL LOCK<sup>®</sup>



for our medical costs. This looms large when time for consideration of any new hires. We need less government manipulation of health care and more competition in the healthcare market(s).

3) Pension Protection Act of 2006. This is a disaster for anyone with a defined benefits pension program. Up until passage of this law/reg, Channellock had an adequately funded DB Plan. With the stroke of a pen (which changed the criteria for calculating the pension liability and the related asset level coverage of the ongoing pension liability)...we became immediately underfunded. This forced us to freeze our plans. We are now faced with funding frozen DB plans (millions of dollars involved!)...when these plans have plenty of assets already in them. These are dollars that could/should be used for capital additions, hiring more people, paying increasing medical plan costs...or...paying our folks some more money in their paychecks. Please look into some relief for existing defined benefits pension programs and for frozen DB programs...by providing relief in the funding criteria.

4) R&D Tax Credits...nice plan...does not work. We have been under IRS audit for the tax years ending 2005,06,07,08 for over two years. Part of the problem is the IRS agent does not understand the R&D Tax Credit tax law and how it is to be applied. Example...we installed 3 robots on a forging drop hammer. To our knowledge, never been done before. They have put robots on forging PRESSES, but not drop hammers. This is the FIRST application. Do you think there might be some research and development involved? Of course.

The agent disallowed the whole project.

The whole 4 year audit is up for appeal. A matter of over \$1,200,000.00 in tax is involved. By the way, we retained a well recognized consultant in the R&D tax law to steer us through the record keeping, so we would do everything correctly. Even brought them in (from Texas) to explain the law to the agent. Sir, this is time and money, staff man-hours spent digging up useless info etc. We should be making pliers and focusing on becoming more competitive with our Chinese competitors rather than fighting with our own government! Simplify the R&D tax code regs, and for God's sake, get agents that understand it.

5) Death/Estate Tax...As stated above, Channellock is a family owned business and has been for 125 years. The writer is fourth generation and my 3 children are all very involved in the management of this business. The elimination of this tax is very near and dear to our hearts. We use all legal methods of minimizing estate taxation. This basically amounts to shoving it on to the next generation or delaying payment via generation

skipping techniques, GRAT's, split dollar life insurance etc. But you basically have to buy a LOT of life insurance to pay the potential death taxes. These premiums could/should be plowed back into the business to make this company more competitive and able to hire more folks. By the way, this is being done without any government "stimulus". Done by just leaving us alone and not taxing us to death and at death. Eliminate the Estate Tax, NOW!

William S. DeArment, President & Chief Executive Officer  
CHANNELLOCK, INC. 1306 South Main Street, Meadville, Pa. 16335-0519  
Phone: 814-724-8700, ext. 213 Fax: 814-337-0685  
1/7/2011 11:53 AM



## Proposed regs...

1) Cap and Trade Tax...Channellock uses a lot of electricity to run equipment, heat steel for forging. We are customers First Energy/Penelec. Most of their power for this region comes from the Homer City, Pa. COAL-FIRED generation facility...

Think large carbon footprint. Our electrical costs will skyrocket. Does not help us at all. This is bad law. A boondoggle. Do not pass it.

2) Employee Free Choice Act/Card Check...what a misnomer! Union power grab. As stated above we have been unionized since 1935, so this Act does not mean a whole lot to us. But there are provisions within the bill that hurt all manufacturing. Again, bad law. Do not pass it.

Sorry to be so long, but you asked.

Anything you can do to create some sort of manufacturing policy, stimulating the manufacturing base in this country will pay big dividends for the citizens of the country. We have lost thousands of factories over the last 5 years. With that continuing loss goes the standard of living for the citizens of this country.

The current administration has NO MANUFACTURING POLICY or PLAN. Not good.

Why not eliminate the Department of Energy and

create a "Department of Manufacturing" to be an inside the government advocate for the creation of a globally competitive manufacturing base in the United States?

This agency would be staffed by folks that have met payrolls in the private sector and understand how free enterprise and business works...

Thank you for reading this. If you have any questions, please, call.

Best regards,

A handwritten signature in cursive script that reads "W.S. DeArment".

W.S. DeArment





# COMPOSITE PANEL ASSOCIATION

*Advancing the wood-based panel and decorative surfacing industries*

19465 Deerfield Avenue, Suite 306, Leesburg, Virginia 20176  
Tel 703.724.1128 • 866.4COMPOSITES • Fax 703.724.1588

January 10, 2011

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

Dear Chairman Issa,

The Composite Panel Association (CPA) appreciates the opportunity to share our perspective on existing and proposed federal regulations that have or would negatively impact job growth in our industry.

CPA represents more than 90% of manufacturers of composite wood panels in the United States, as well as the broader value chain of businesses (suppliers, vendors, downstream manufacturers, etc.) that are directly affiliated with the industry. Our members are concerned with the continued promulgation of federal regulations that threaten the viability of small, rural and mature industries such as ours, and we are bringing your attention to a few of these in this letter.

For decades, US composite panel manufacturers have used wood mill by-products, including chips, sawdust, shavings and trim, in the production of particleboard, medium density fiberboard (MDF) and hardboard. Almost all composite panels made in the United States are consumed by the domestic economy – first by manufacturers of finished goods like those described above, then by American retailers and consumers themselves. Most US panel manufacturers have their production facilities in rural areas where they are among the largest local employers.

You will undoubtedly receive feedback from other organizations regarding Environmental Protection Agency (EPA) actions on greenhouse gas emissions as well as the utilization of wood byproducts as a power source under Boiler MACT; the Occupational Safety and Health Administration (OSHA) policy update on noise abatement; and, perhaps, the Federal Trade Commission's (FTC's) rewriting of its "Guides for Environmental Marketing Claims." CPA is concerned about these and other rulemakings and updates in administrative policy. However, the continued existence of the US panel industry – and the

#### CANADA

Post Office Box 747, Station "B", Ottawa, Ontario K1P 5P8 • Tel 613.232.6782 • Fax 703.724.1588

#### INTERNATIONAL TESTING AND CERTIFICATION CENTER

73 Lawson Road, Suite 101, Leesburg, Virginia 20175 • Tel 703.724.1128 • Fax 703.724.1588

[www.pbmdf.com](http://www.pbmdf.com)

many thousands of domestic businesses we serve – is directly and uniquely affected by two current regulations that merit specific mention.

*EPA: Formaldehyde Emissions from Pressed Wood Products*

On December 3, 2008, EPA issued an advanced notice of proposed rulemaking to investigate the risks posed by formaldehyde emissions from pressed wood products. Concerned that the EPA would impose a burdensome, unworkable federal regulatory regime to replace the de facto national standard developed by the California Air Resources Board (CARB), CPA led a coalition of manufacturers, suppliers, retailers and environmental groups to support the bi-partisan "Formaldehyde Standards for Composite Wood Products Act." This landmark legislation, H.R. 4805 and S. 1660 from the 111<sup>th</sup> Congress, was signed into law by President Obama on July 7, 2010 (P.L. 111-199).

P.L. 111-199 directs EPA to promulgate regulations to implement this law by January 1, 2013. CPA supports this approach and is actively working with the agency. The legislation, developed with input from all relevant stakeholders, essentially mirrors the established CARB standard for achieving public health goals related to composite wood products. **More importantly, it creates a national standard that is rigorous, verifiable and that protects domestic manufacturers from competing with imported products that fail to meet these ambitious but achievable emission levels.**

The current regulatory process at EPA must not morph into a final regulation that results in aggressive enforcement against domestic-based industries and little or no enforcement against those based offshore. It is the latter that has been the focus of concern about high-emitting products entering the domestic marketplace, and thus the latter against which enforcement of the EPA regulation must be assured.

*USDA: Biomass Crop Assistance Program*

On October 27, 2010, the US Department of Agriculture (USDA) published a final rule related to the Biomass Crop Assistance Program (BCAP). The program, established in the 2008 Farm Bill, was intended to provide incentives to farmers, ranchers and forest landowners for the establishment and cultivation of biomass crops for heat, power, bio-based products and

biofuels. Unfortunately, this was the first formal rulemaking that USDA had undertaken for BCAP.

Seventeen months earlier, on June 11, 2009, USDA issued a Notice of Funds Availability for the Collection, Harvest, Storage and Transport (CHST) Matching Payments portion of BCAP. The matching payments, dollar for dollar up to \$45 per dry ton, totaled nearly \$250 million before BCAP was abruptly suspended on February 4 of last year. Without entering a formal rulemaking process, and without a public comment period, USDA began expending unlimited matching payment funds through its local Farm Services Agency (FSA) offices for materials and wood fiber upon which our industry, and other industries, solely rely. Without chips, sawdust, shavings and trim, there would be no domestic composite panel industry.

CPA commended the USDA for its efforts to address industry's concerns in the October 27, 2010 final rule. However, a newly released report by the USDA Office of Inspector General on the CHST Matching Payments Program (attached) underscores CPA's concerns about how USDA intends to implement its final rule. Beyond the reasonable questions raised in the OIG report, and USDA's brief response, CPA and other industries that rely on wood fiber are concerned with how USDA intends to establish "existing markets for 'higher-value materials' to avoid fraudulent activity that could once again put our wood fiber supply at severe risk. We believe that further oversight of the BCAP program in coordination with Chairman Lucas is essential.

Thank you again for the opportunity to address these issues and for your well-founded concern about the impact of federal regulations on domestic-based industries and American jobs. Please ask your staff to contact me if you have any questions or require more information.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Julia", with a stylized flourish at the end.

Thomas A. Julia  
President



United States Department of Agriculture  
Office of Inspector General  
Washington, D.C. 20250



DATE: December 9, 2010

AUDIT  
NUMBER: 03601-28-KC (1)

TO: Jonathan Coppess  
Administrator  
Farm Service Agency

ATTN: Philip Sharp  
Acting Director  
Operations Review and Analysis Staff

FROM: Gil H. Harden /s/  
Assistant Inspector General  
for Audit

SUBJECT: Recommendations for Improving Basic CHST Program Administration  
Biomass Crop Assistance Program Controls over Collection, Harvest, Storage,  
and Transportation Matching Payments Program

### Summary

The Biomass Crop Assistance Program (BCAP) was authorized by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) to support the establishment and production of eligible crops of renewable biomass.<sup>1</sup> Biofuel production plays a key role in the Administration's efforts to achieve homegrown sustainable energy options.<sup>2</sup> One portion of BCAP involves provisions for matching payments to assist agricultural and forest land owners and operators with the cost of collection, harvest, storage, and transportation (CHST) of eligible material for use in a qualified biomass conversion facility. This provides an incentive for collecting underutilized biomass, such as crop residue and wood waste, for energy production.<sup>3</sup> Before the program was

---

<sup>1</sup> Biomass is organic material that can be converted into heat, power, bio-based products, or advanced biofuels.

<sup>2</sup> "Memorandum on Biofuels and Rural Economic Development," Daily Compilation of Presidential Documents, dated May 5, 2009.

<sup>3</sup> Farm Service Agency, "Fact Sheet: The Biomass Crop Assistance Program," dated June 2010. Congressional Research Service, "Biomass Crop Assistance Program: Status and Issues," dated August 13, 2010.

terminated,<sup>4</sup> the Farm Service Agency (FSA) spent a total of over \$243 million on the CHST portion in 2009 and 2010.<sup>5</sup>

BCAP is a brand new program unlike any other that FSA has historically delivered. Additionally, the CHST portion of BCAP resulted in very high FSA county office workload in many areas minimally staffed because of limited production agriculture activities and participation by a producer base not normally accustomed to doing business with FSA. At the request of FSA, OIG performed a review of the CHST portion of BCAP, focusing on the efficacy of processes and controls FSA used in implementing the program. Based on our review of 12 county office operations in 4 States, as well as overall administration of the program at the national office, we found wide-ranging problems in how the CHST program was operated. These included inconsistent application of program provisions across State and county offices, varying methods for measuring biomass moisture levels,<sup>6</sup> inconsistent use of program forms, and data errors. These problems occurred because FSA, in an effort to quickly implement the program to comply with a deadline established by Presidential Directive, was unable, in the limited timeframe, to develop a handbook, specialized forms, or a computer support system that was suited to the specific requirements of the CHST program. Due to these problems, FSA implemented a program that encumbered the efforts of its field-level personnel and resulted in inequitable treatment of program participants, improper payments, and reduced scope for oversight and accountability.

In order to correct these problems, we are recommending that FSA develop a program-specific handbook, program-specific forms, and a program-dedicated data system that includes suitable edit checks and reporting functions. These issues are being provided in a Fast Report format to aid FSA as it moves forward with re-implementation of the CHST program. This Fast Report provides only a few examples of the problems and deficiencies found by OIG; a full report with greater scope and detail will be provided at the completion of our fieldwork. Agency managers were previously briefed on these findings and were in general agreement with the facts.

## Background

The 2008 Farm Bill authorized such sums as are necessary to carry out BCAP, and in 2009, it received \$25 million in funding. The 2010 Supplemental Appropriations Act<sup>7</sup> set BCAP funding at \$552 million in fiscal year 2010.

---

<sup>4</sup> The program was terminated after the proposed rule was issued on February 3, 2010; however, deliveries were allowed to continue through April 30, 2010. The final rule was issued on October 27, 2010. With the final rule announcement the collection, harvest, storage, and transportation program has been reauthorized, but is currently awaiting implementation guidance.

<sup>5</sup> Farm Service Agency, "BCAP CHST Summary Report," dated October 20, 2010.

<sup>6</sup> All moisture measurements were performed by biomass conversion facilities. These data were then submitted to FSA to support matching payment disbursements.

<sup>7</sup> Public Law 111-212.

BCAP supports two sets of activities. First, it provides funding for “matching payments” for certain eligible material sold to qualified biomass conversion facilities. CHST matching payments are made at a rate of \$1 for each \$1 per dry ton<sup>8</sup> paid by a qualified biomass conversion facility, in an amount up to \$45 per dry ton. Second, BCAP provides funding for producers to establish and maintain renewable biomass crops in specified project areas. The second part of the program had not yet been implemented at the time of our review.

On May 5, 2009, the President issued a directive calling for the acceleration of investment in and production of biofuels.<sup>9</sup> In particular, the directive called for the issuance of guidance and support related to the collection, harvest, storage, and transportation of eligible materials for use in biomass conversion facilities within 30 days. In order to meet this directive, on June 11, 2009, the Commodity Credit Corporation (CCC) published a BCAP notice of funds availability in the Federal Register for the collection, harvest, storage, and transportation of eligible materials. FSA administers this program on behalf of CCC.

We initially selected Missouri for our review because it allowed us to test our audit program and it was in close proximity to our office conducting the field work. We then selected FSA offices in Alabama, California, and Maine because they distributed the largest amounts of matching payments to program participants. They also represented a diverse range of biomass industries and varying geographical regions. County offices were selected primarily based on payment volume. The national office was reviewed to gain perspective on overall program administration.

## Results

The expedited manner in which the CHST program was implemented created confusion among field level personnel on program requirements, methods of administration, and data system use. Our review found that, among other issues, county offices allowed different standards for acceptable moisture levels in biomass shipments, which resulted in inequitable treatment of program participants. We also found that county offices used forms inconsistently, with one scenario resulting in improper payments. Finally, we found data errors in the computer system used for the program that often reported payment amounts violating program requirements.

These problems occurred because FSA was unable to develop a handbook, a specialized form for the program, or a program-specific database. FSA usually develops program handbooks to instruct county office personnel in the day-to-day administration of a major program. However, FSA officials explained they did not have the time to develop a handbook for the CHST program.

---

<sup>8</sup> There is no definition of “dry ton” in the notice of funding availability or statute. The final rule states that one dry ton means “one U.S. ton measuring 2,000 pounds. One dry ton is the amount of renewable biomass that would weigh one U.S. ton at zero percent moisture content.” It is important to note that the final rule was not issued during the period under study. However, Notice BCAP-2, “Implementing the BCAP’s CHST Matching Payment Program,” dated July 12, 2009 defined a dry ton as the weight of actual biomass with zero percent moisture.

<sup>9</sup> Published in the Federal Register (FR) on May 7, 2009 (74 FR 21531-21532).

Second, FSA used an existing form developed for the implementation of conservation cost-share programs that did not fit the particular requirements of the CHST program. On the pre-existing form AD-245,<sup>10</sup> FSA made a single modification in order to administer the CHST program, adding a program-specific certification in the “remarks” section. FSA officials explained that creating new forms would involve obtaining approval from the Office of Management and Budget (OMB),<sup>11</sup> which can take from 6-9 months. Given the time constraints imposed by the Presidential Directive, FSA explained that it did not have the time to develop and implement a properly approved CHST-specific form.

Third, FSA did not develop a program-dedicated data management system with fields appropriate to the requirements of the CHST program, and did not create edit checks to catch data entry errors and ensure that data did not violate program provisions. Instead, FSA used the existing Conservation, Reporting, and Evaluation System (CRES) to monitor CHST program allocations and expenditures. CRES was originally created to support conservation cost share programs and the form AD-245. FSA stated that it lacked resources to timely create a new data system.

If these three elements are not developed before the CHST program is re-implemented, FSA runs the risk of continuing to encumber the efforts of its field level personnel, potentially resulting in further inequitable treatment of program participants, improper payments, and reduced oversight and accountability.

#### *FSA Did Not Determine Adequate Standard Definitions of Moisture Levels*

We found that county offices accepted differing methods used by biomass conversion facilities for determining what levels of moisture in biomass loads would qualify as dry. The moisture levels were measured by the biomass conversion facilities and then shared with the county offices on a periodic basis.

During our review, OIG found 5 different methods for measuring moisture levels. For example, some facilities would individually test each load delivered by a program participant, while others would combine samples of all shipments from one participant in a given day and then measure the resulting moisture content. One facility recorded every load delivered as having the same moisture content rate.<sup>12</sup>

The CHST program was required to account for moisture levels when calculating matching payments. Measuring by dry weight serves to equalize payments for different materials, which naturally have different moisture rates. Loads with moisture levels higher than zero percent are

---

<sup>10</sup> Page 1 is called “USDA Request for Cost Shares,” and page 2 is called “Practice Approval and Payment Application.”

<sup>11</sup> Pursuant to the Paperwork Reduction Act of 1995, agencies must go through a public comment and OMB-approval process for all new forms that will collect information from 10 or more respondents in a 12 month period.

<sup>12</sup> This facility would often measure moisture content of non-BCAP materials along with BCAP-eligible materials. Also, regardless of the actual measurements, the facility made the decision to apply a single moisture content rate, explaining that they believed it to be a historical average.

paid based on adjusted weight, which is calculated in proportion to the moisture percentage measured. For example, if a biomass load is measured as having 15-percent moisture, then the gross weight is reduced by roughly 15 percent. However, one facility used a 12-percent moisture rate as standard, despite the BCAP Notice which specified that a dry ton should have zero percent moisture.<sup>13</sup> At this facility, a biomass load having a 15-percent moisture rate would have had its gross weight reduced by only 3 percent. The county office where the facility in question was located allowed this practice per advice from the State office and pending the development of more definitive guidance by the National Office. This practice resulted in overpayments for biomass loads that would have received less in other areas. For instance, one participant was overpaid by over \$679, while another was overpaid by at least \$828. In total, there were 24 program participants who received matching payments for deliveries to this facility for the county office in question.

Due to these uncertainties over moisture content, program participants received inequitable treatment. OIG concluded that FSA, as part of developing a handbook for the program, needs to consistently define and apply the levels of moisture appropriate for the program.

#### *FSA Used an Unsuitable Form for the Program That Resulted in Improper Payments*

The form FSA used to administer the CHST program is not tailored to a program that requires multiple payments over time. Throughout our review, we found inconsistent use of the form AD-245's page 2, which is used for supporting program payments.

In the CHST program, county offices receive settlement sheets on a periodic basis which detail the number of loads received from a program participant and the amount paid for each. Matching payments are then disbursed based on this information. Unfortunately, within the structure of the form AD-245, FSA personnel are unable to correct for errors in one payment disbursement without starting over and detailing all previous payments again. Many county offices started keeping records by hand to account for errors. In one case, an error in a payment resulted in two subsequent payment errors before it was finally corrected.

In an extreme example, a county office did not require a completed page 2 to support each matching payment. Instead, it made an arrangement with the biomass conversion facility where it would email copies of delivery documents to the county office, and the county office would generate checks to program participants using information from the documents. During this arrangement, the county office overlooked some payments when it failed to recognize at least one email containing copies of delivery documents. This resulted in five producers with eligible deliveries who did not receive matching payments of over \$18,500. Also, at least one program participant was not paid because the biomass conversion facility did not realize that participant was approved for the program, and did not forward the payment information to FSA. This program participant did not receive matching payments totaling over \$3,400 for his eligible deliveries.

---

<sup>13</sup>Notice BCAP-2, dated July 12, 2009.



Due to the unsuitable nature of the form used to administer the program, improper payments were made. OIG concluded that FSA should ensure that day-to-day program administration is easily facilitated on forms used for the CHST program.

*FSA Used an Unsuitable Data System That Hinders Monitoring and Reporting*

Because the CRES computer system was not created specifically for the CHST program, misunderstanding by personnel led to erroneous data being entered into it. To administer the CHST program correctly, the quantity of dry tons delivered and the payments made both need to be accumulated for each matching payment. However, some county offices did not know that CRES automatically adds entries within the dollar field, but not the quantity field. Therefore, when they would enter the correct quantity and payment for each individual matching payment, CRES would then show quantities that did not correspond to the total quantities they had entered. In many cases, this led to performance reporting data showing payment rate amounts significantly higher than the maximum payment rate of \$45 per dry ton. In one instance, the data indicated a payment rate exceeding \$12,000 per dry ton.<sup>14</sup>

With inadequate edit checks on the data within the system, discrepancies often occurred that make it more difficult to monitor compliance with the maximum payment rate. OIG concluded that as part of developing a program-specific data system, FSA should create appropriate edit checks for critical and necessary data fields to ensure the data entered are properly validated and reliable.

Given the problems we found, we are recommending that FSA take the following steps before any future implementation of the BCAP CHST program:

Develop (1) a program handbook setting forth policies and procedures governing program administration; (2) forms specifically tailored to facilitate day-to-day administration and capture relevant program data; and (3) a data system with applied edit checks and a designed structure to facilitate data validation, management reporting, and data analysis.

Please provide a written response within 5 days outlining your proposed corrective action for this issue. If you have any questions, please contact me at (202) 720-6945, or have a member of your staff contact Ernest M. Hayashi, Director, Farm and Foreign Agricultural Services, at (202) 720-2887.

---

<sup>14</sup> After conducting our data analysis and discovering these potential errors, we provided FSA with the results of our analysis for follow-up.

**Agency's Response**

---

**USDA'S**

**FARM SERVICE AGENCY'S**

**RESPONSE TO AUDIT REPORT**



United States  
Department of  
Agriculture

Farm and  
Foreign  
Agricultural  
Services

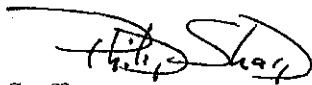
Farm  
Service  
Agency

Operations Review  
and Analysis Staff

1400 Independence  
Ave, SW  
Stop 0540  
Washington, DC  
20250-0540

December 16, 2010

**TO:** Director, Farm and Foreign Agriculture Division  
Office of Inspector General

**FROM:** Philip Sharp, Acting Director  
Operations Review and Analysis Staff 

**SUBJECT:** Responding Your Memorandum Dated December 9: Recommendations for  
Improving Basic CHST Program Administration Biomass Crop Assistance Program  
Controls over Collection, Harvest, Storage, and Transportation Matching Payments  
Program, Audit 03601-28-KC (1)

A final rule was published in the Federal Register on October 27, 2010, and new internal guidance, forms, and software are scheduled to be released for matching payments in early January 2011 which will satisfy the three OIG recommendations. However, as of December 14, FSA has received all required OMB clearance to make the program available and intends to do so immediately. In the interim period before the new software is available, FSA intends to deliver the matching payments portion of BCAP using the same forms and information systems as were used for previous CHST implementation. Use of the old forms is not likely to be widespread because biomass conversion facilities must first become "qualified" before an eligible material owner could apply for a matching payment.

The initial software release scheduled for early January 2011 will be for matching payments. A future software release is planned for the project portion of the program which includes mid- to long-term contracts and establishment payments. The release date may be adjusted to accommodate funding availability for software development.



USDA is an equal opportunity provider and employer.



January 7, 2011

The Honorable Darrell Issa  
Chairman  
Committee on Oversight and Government Reform  
Congress of the United States  
Washington, DC 20515

Dear Chairman Issa:

We thank you for your letter dated January 5, 2011, requesting our comments on existing and proposed regulations that negatively impact the economy and jobs. We are certainly pleased to provide this response, and we stand ready to discuss the following two issues with you at your convenience:

**Form 1099 IRS Reporting Requirement.** For 2011, the most pressing issue on the business agenda, especially for small businesses, is repeal of the new Form 1099 reporting requirement enacted under §9006 of the Patient Protection and Affordable Care Act. Under this provision, beginning in 2012, any business that pays a single vendor for goods or services valued at \$600 or more must provide that vendor with a Form 1099-MISC, and this Form 1099-MISC must also be provided to the IRS. Whether a business pays for goods or services – either to a corporation or individual, payments tallying \$600 or more during a calendar year must be reported both to the IRS and the recipient on a Form 1099-MISC. CompTIA believes this provision has a disproportionately negative effect on small businesses and should be repealed immediately. While some assert this provision was enacted in an effort to close the tax gap, CompTIA believes this assertion is debatable, and also that the compliances costs required of businesses would surpass projected revenue gains.

**3% Federal Income Tax Withholding on Government Contracts.** Next, we support repeal of a provision enacted in 2006 that would require all federal, state and local government entities and instrumentalities to withhold 3% of payments made for goods and services for federal income tax liabilities. Enacted into law on May 17, 2006, section 511 of the "Tax Increase Prevention and Reconciliation Act of 2005" (Public Law No. 109-222), will become effective for payments made after calendar year 2011. We note that this withholding requirement departs from the traditional scheme of federal tax payments, because the static 3% withholding rate bears no relation to anticipated taxable income. Indeed, a small business working under a government contract with a slim profit margin could actually experience a net loss for the tax year; even so, that business would still be subject to the 3% withholding. For small businesses, this provision will:

- Reduce Federal procurement opportunities for small businesses that cannot carry the increased financing requirements;
- Cause cash flow problems for both prime and subcontractors, jeopardizing the smooth/timely execution of the contract;
- Increase interest costs to small businesses for operating funds needed to cover the 3% withholding; and
- Cause higher contract costs for government.

Accordingly, CompTIA believes this 3% withholding requirement must be repealed. It is unfair to small businesses and will force more and more small business out of the competition for federal government procurement opportunities.

Again, on behalf of our membership, we thank you for the opportunity to share these issues with you. We would certainly appreciate the chance to meet and discuss these matters further.

Should you have any questions, please do not hesitate to contact me at [MEvans@comptia.org](mailto:MEvans@comptia.org) or 202-543-3003 x202.

Sincerely,

**Matthew L. Evans**  
Manager, Public Advocacy  
CompTIA  
Washington, DC 20002



Representing Household & Institutional Products

Aerosol • Air Care • Cleaners • Polishes  
Automotive Care • Antimicrobials • Pest Management

**D. Christopher Cathcart**  
**President**

January 14, 2011

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

Dear Chairman Issa:

I am writing in response to your effort to examine existing and proposed Federal regulations to help ensure a balanced approach in agency implementation that will serve the public interest while also supporting U.S. innovation and jobs.

The Consumer Specialty Products Association (CSPA) is the premier trade association representing the interests of some 240 companies engaged in the manufacture, formulation, distribution and sale of \$80 billion annually in the U.S. of hundreds of familiar consumer products that help household and institutional customers create cleaner and healthier environments. Our products include disinfectants that kill germs in homes, hospitals and restaurants; candles, and fragrances and air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day. Through its product stewardship program, Product Care®, and scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety, sustainability and environmental impacts of their products. For more information, please visit [www.cspa.org](http://www.cspa.org).

Our industry leaders greatly appreciate your leadership on these important business issues and this opportunity to identify some specific agency actions that would warrant additional congressional oversight and agency review. We offer six issues for your consideration:

**Issue 1.** Ensuring accurate and quality data is provided under the Publicly Available Consumer Product Information Database of the Consumer Product Safety Commission (CPSC);

**Issue 2.** Promoting necessary and reasonable revisions to the National Volatile Organic Compound Emission Standards for Consumer Products;

**Issue 3.** Supporting feasible emissions reductions under the EPA National Ambient Air Quality Standards (NAAQS);

**Issue 4.** Protecting U.S. competitiveness in global markets through U.S. leadership in the implementation of GHS for consumer products;

**Issue 5.** Validating test methods adopted for endocrine disruption testing requirements at U.S. EPA; and

**Issue 6.** Ensuring transparency and due process in the development and implementation of Federal regulations.

A brief description of our concerns and recommendations for oversight on these issues follows.

**Issue 1: U.S. Consumer Product Safety Commission implementation of the Publicly Available Consumer Product Information Database**

**Agency/Law:** U.S. Consumer Product Safety Commission (Commission); Consumer Product Safety Act (CPSA).

**Background:** Section 212 of the Consumer Product Safety Improvement Act (CPSIA) requires the Commission to establish and maintain a product safety information database that is available and searchable to the public. Specifically, section 212 of the CPSIA amended the CPSA to create a new section 6A of the CPSA, titled "Publicly Available Consumer Product Safety Information Database." Section 6A of the CPSA sets forth specific content, procedures, and search requirements for the publicly available database. On December 10, 2010 the Commission published a final rule on the implementation of this database. The regulations impose new requirements and costs on industry to provide data to the government; however, CSPA feels that, as currently constructed, the incident database will fail to provide the Commission or the public with accurate and high quality data about the risks of consumer products. In particular, changes to the scope of those individuals eligible to submit claims and also regarding the procedures for correcting inaccurate information in such claims are absolutely necessary to better reflect the goals of Congress with development of such a database.

**Action:** Instruct the Commission to postpone regulations on the implementation of the database to address accuracy and quality of product safety information available to the public in the database.

**Issue 2 : U.S. EPA Should Revise the National Volatile Organic Compound Emission Standards for Consumer Products**

**Agency:** U.S. EPA, Office of Air Quality Planning Standards; Clean Air Act

**Background:** In 1998, EPA promulgated the first national volatile organic compound (VOC) emission standards for certain categories of consumer products pursuant to Section 183(e) of the Clean Air Act. See 40 C.F.R. Part 59 Subpart C. During the past 21 years, CSPA member companies spent hundreds of millions of dollars to lower VOC content in consumer products to help improve air quality while maintaining our industry's ability to supply effective products that consumers can rely upon to contribute positively to their health, safety, and quality of life. Since many consumer products are manufactured for a nationwide or regional market, CSPA supports uniform regulations that improve air quality without imposing unnecessary impediments to interstate commerce. Thus, CSPA worked cooperatively with the EPA to assist development of the current regulation; CSPA also supports EPA's action to make reasonable revisions to its national regulation.

To date, 15 states have promulgated final regulations based on the Ozone Transport Commission's (OTC) Model Rule for Consumer Products. These state regulations cover more categories of consumer products and generally impose more stringent limits than the current EPA rule. These regulations are an integral part of the states' comprehensive strategy to reduce ground-level ozone to demonstrate attainment of the federal eight-hour ozone air quality standard. CSPA worked cooperatively with these states to encourage the development of consistent regional regulations since even slight differences between state regulations can make it very difficult for medium and small-size companies to comply with the stringent VOC limits.

At the present time, EPA is developing revisions to the current national regulation that incorporate provisions of the OTC Model Consumer Products Rule. EPA had planned to publish a proposed regulation in 2009; however, the Agency has taken no action on this regulatory proposal.

**Action:** Congressional oversight should seek to expedite the EPA rulemaking process to develop appropriate and necessary revisions to the national consumer products regulation. This *affirmative* regulatory action to the national regulation will help states comply with the federal air quality standard. It is estimated that these revisions to EPA's current regulation would allow states to claim up to approximately 40 percent total emission reduction credits toward their SIP commitments in the consumer products inventory. In addition, consistent national regulatory standards will help product manufacturers avoid the potential problem that would be caused by a patchwork of different (and potentially conflicting) state-specific regulations.

### **Issue 3: EPA Reconsideration of the National Ambient Air Quality Standard for Ozone**

**Agency/Law:** U.S. Environmental Protection Agency/ Federal Clean Air Act

**Background:** U.S. EPA is required to periodically review National Ambient Air Quality Standards, including the NAAQS for Ozone. In 2008, EPA completed a review and announced its decision to reduce the standard from 84 ppb to 75 ppb. In 2009, however, EPA began work to reconsider its decision, and instead set a lower standard. In 2010, EPA proposed for comment setting a new standard somewhere between 60 and 70 ppb, while acknowledging that a 60 ppb standard could cost \$90 billion annually by 2020. CSPA and other industries potentially even more highly impacted urged EPA to implement the standard set in 2008 to allow states and regions to determine what emission reductions would be required and what would be feasible over what time period, which occurs during the State Implementation Plan revisions in implementation of a new NAAQS for Ozone. Consumer product emissions play a very minor role in ozone formation, but would likely be targeted by states. Premature implementation of lower ozone standards could force states to seek emission reductions from consumer products that are not feasible. EPA announced in December 2010 that they planned to finalize a new ozone standard by July 2011.

**Action:** Congress should encourage EPA to move deliberately in reviewing and revising the NAAQS for ozone to allow time for state and regional implementation and for necessary new technologies to be developed and commercialized, especially in the transportation and energy generation sectors whose emissions play the major role in ozone formation.



**Issue 4: Need for more U.S. government leadership in international negotiations to create and implement chemical management systems, and to harmonize the labeling of imported and exported goods.**

**Agency/Law:** U.S. Consumer Product Safety Commission (Commission); Federal Hazardous Substance Act (FHSA) as a proposed vehicle for implementation of the U.N. Globally Harmonized System of Classification and Labelling (GHS).

**Background:** Beyond any existing or proposed regulations (i.e., action by our government), U.S. industry has and continues to be impacted negatively due to inaction by our government, particularly in the effort to reduce barriers for U.S. exports and trade. More and more individual and unions of nations around the world are creating and implementing chemical management systems and, in the process, implementing measures to harmonize the labeling of imported and exported goods. Unless the U.S. government exercises that leadership via both domestic action and international outreach, the vast knowledge we possess about these issues and their complexities will be lost. A very negative impact could be that the assessment criteria upon which international regulatory actions are predicated might be limited to a misguided interpretation of the precautionary principle. This would put our industries, and the consumer products industry, in particular, in an untenable position. The concept of risk-based assessments and its focus on sound science, which are the bedrock upon which U.S. regulations are based, will recede in the global marketplace, taking the pre-eminence of the U.S. as a global economic force with it.

OSHA and the DOT have been working both to complete GHS implementation under their jurisdictions and to remain engaged in the international negotiations on GHS at the UN. However, despite industry calls for making this a priority, the Commission has taken no discernible action to engage either domestically in GHS implementation or internationally in terms of outreach to other economies. GHS implementation for consumer products, in line with the concepts contained in the FHSA regulations, would importantly enhance the ability of our industry to innovate and grow in the global marketplace. Without the Commission demonstrating leadership by implementing GHS domestically in an appropriate way and engaging internationally to influence other countries to follow our lead, U.S. industry will be required to defer to practices defined by our trading partners—this will negatively impact jobs and the U.S. economy.

**Action:** Congressional Committee(s) should undertake oversight to determine the priority and capacity for GHS implementation at the CPSC in order to elevate it on the Commission's regulatory agenda. If necessary, appropriators should prioritize the dedication of Commission resources to the implementation of this core mission that will promote job creation and retention through increased trade and global competitiveness.

**Issue 5: EPA Implementation of the Endocrine Disruptor Screen Program**

**Agency/Law:** U.S. Environmental Protection Agency/ Federal Insecticide, Fungicide and Rodenticide Act and Safe Drinking Water Act

**Background:** Amendments to FIFRA and SDWA more than a decade ago mandated development of a program to screen chemicals in pesticides and in drinking water for possible endocrine system effects that could lead to human health or environmental effects. The intention at that time was to

develop scientifically-validated, low-cost screening test to evaluate selected chemicals. After a dozen years of scientific and policy deliberations, EPA developed an extensive battery of expensive (\$1 million per chemical) tests which may or may not be interpretable in triggering requirements for even more expensive toxicity tests costing many more millions of dollars. In 2009 and 2010, EPA implemented the Endocrine Disruptor Screen Program (EDSP) by sending out a test order covering approximately 70 pesticide chemicals (Phase 1). In late 2010, EPA issued a policy document that tacitly acknowledges that it is uncertain how the eventual results of those tests will be interpreted, but nevertheless also proposed to issue test orders for 120 more pesticide and drinking water chemicals.

**Action:** Congress should question EPA's decision to move forward with requiring additional chemicals to undergo testing without first having determined that it can interpret the results of the first phase of chemicals tested. Congress should urge the Agency to act more deliberately and assure that the results of this extensive and expensive testing are interpretable and scientifically valid.

#### **Issue 6: Negative Economic Effects of Regulation by Letter**

**Agency/Law:** U.S. EPA; Administrative Procedures Act

**Background:** The Administrative Procedures Act (APA) provides clear guidance to federal agencies on how to develop and codify regulations. Combined with the Regulatory Flexibility Act and the Paperwork Reduction Act, the APA ensures that the regulated community has sufficient notice of an agency's proposed action, opportunity to comment, and an avenue for appeal if the stakeholder disagrees with the action. In short, these administrative laws and procedures guarantee due process for the regulated community.

When an agency decides to make substantive changes in regulations by sending registrants a "Dear Registrant" letter, that agency action abrogates or short-changes due process. This has far-reaching effects for the economy and for the product regulated. For the consumer products industry, in particular, such unanticipated regulations can have a negative economic impact across the entire supply chain for each affected product. Starting with the business plan of the manufacturer(s) of the raw material to the formulator of the product to the packaging supplier and the distributor or shipper, each business that supplies a component of the product will be negatively affected. In addition, the seasonal nature of some consumer products heightens the impact since changes in seasonal product schedules mean that at least one (1) season/year is lost. Such an unanticipated disruption in production means that the whole sector of the economy is negatively impacted.

Abrogated administrative procedures also increase the likelihood that agencies may unwittingly deviate from sound science and use anecdotal data or unverified information when good science and documented experiences are available from registrants in the regulated industry.

**Action:** Oversight hearings should focus on how agency actions, such as those at the U.S. EPA, under the Administrative Procedures Act, serve to circumvent the law and its regulatory safeguards. These actions could compromise the legitimacy of agency actions, as well as the ability of the regulated community to efficiently coordinate compliance measures and business plans. This would

The Honorable Darrell Issa  
January 14, 2011  
Page 6 of 6

inhibit performance and growth. Improving these systems will benefit consumers and business through the adoption of regulations based on sound science and that have received appropriate notice and comment to allow all stakeholder input.

In summary, we believe these six issues offer examples of how Federal regulatory action, or inaction, present significant concerns to our industry from a compliance angle. We greatly appreciate an opportunity, through oversight hearings, to provide additional input on the impacts they will have on our industry, as well as our recommendations for a more reasonable approach that can help us meet the requirements of the law(s) while also protecting jobs, U.S. innovation and competitiveness. Thank you again for your leadership and please feel free to contact me for additional information.

Sincerely,

A handwritten signature in black ink, reading "Chris Cathcart". The signature is written in a cursive, flowing style.

D. Christopher Cathcart  
President



January 14, 2011

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

Dear Chairman Issa:

On behalf of the Forging Industry Association (FIA), thank you for this opportunity to provide you with our comments on existing and proposed regulations that negatively impact the economy and jobs, and ways in which the rulemaking process can be reformed.

Forging is one of the oldest known metalworking processes, where metal is pressed, pounded or squeezed under great pressure into high-strength parts known as forgings. The process is usually performed by preheating the metal to a desired temperature before it is worked. Forged parts are strong and reliable and therefore, vital in safety-critical applications. Rarely seen by consumers, forgings are normally component parts inside assemblies. For example, forgings are necessary components in the following applications:

- **Automotive** – A single car or truck may contain 250 forgings, and 40% of all truck axle assemblies are comprised of forged components;
- **Aerospace** – structural, engine and landing gear parts of commercial and military aircraft are forged;
- **Defense** – a heavy tank contains over 550 separate forgings, the 120mm gun tube on the M1A2 battle tank is forged, the US Navy's Aegis Class guided missile destroyers are steered by 2 forged rudder stocks approximately 20 feet in length and weighing 35,000 pounds each, cruise missile warheads and all penetrator bomb cases are forged, and a standard artillery shell usually contains at least 2 forged components;
- **Power Generation** – safe and reliable pressure vessels, generator rotors, pump shafts, valve manifolds, valve bodies, turbine blades and shafts, pipes, and fittings are forged for nuclear (commercial and naval), land, and marine power generation equipment;
- **Wind Energy** – about 20 metric tons of forgings are used in a typical large wind turbine;
- **Oil and Gas Exploration** – hundreds of forgings are used in both an oil rig tension leg platform and land-based drilling rigs;
- **Mining** – forgings up to 70,000 pounds are used in surface and underground mining equipment. A forged drill bit was used to rescue the Chilean miners;
- **Rail** – The Association of American Railroads requires all axles to be forged for railcars and locomotives. In locomotives, the traction gears and the engine crankshaft and camshaft are all forged;
- **Medical** – Quality surgical tools and joint replacements require strong, light-weight forgings;
- **Tools** - Hammers and wrenches are forged; and
- **Sports** – Forged golf clubs allow more efficient transfer of energy from clubs to ball than traditional clubs – that equals more distance without swinging harder.

The North American forging industry is comprised of approximately 500 forging operations in 38 states, Canada and Mexico. Forging presence in the United States is concentrated in Ohio, Pennsylvania, Illinois, Michigan, California, Texas, New York, Indiana, and Wisconsin. The modern forging process is capital intensive, and most forging plants are small businesses.

### ***U.S. Manufacturers Need a Regulatory System That Works***

FIA member companies pride themselves on providing well-paying jobs in their communities and ensuring that they are in compliance with all necessary health, safety and environmental regulations. Appropriate regulations that improve health, safety and the environment are a necessary part of doing business in the U.S. However, when the regulatory process produces new regulations that do not provide additional benefits for the attendant costs, and the regulated community has little to no opportunity to participate in that process, the system is broken.

First, we would like to bring to your attention some overarching problems with the rulemaking process itself.

1. Overall lack of understanding of the manufacturing supply chain and the effects of regulations on that supply chain.

From the U.S. Environmental Protection Agency (EPA) to the Department of Energy (DOE), the Department of Interior (DOI) and the Occupational Safety and Health Administration (OSHA), there appears to be little to no understanding of the manufacturing process and the unintended consequences of certain actions throughout the supply chain. For example, forged parts are critical components of alternative energy sources such as wind turbines and nuclear power plants. However, natural gas and induction furnaces are required to make forged parts. As EPA regulates greenhouse gas (GHG) emissions and potentially requires small and medium sources to comply with GHG emission limits, forging operations may have to comply with these limits solely because they use natural gas in the making of forged parts. So while on one hand the Administration and others trumpet the need for increased use of alternative energy sources, agency proposals are poised to make the very U.S. manufacturers necessary to build those alternative sources less competitive. Similarly, regulations aimed at the oil and gas industry or the automotive or aerospace industries are often proposed without regard to the potentially devastating downstream effects on their suppliers.

To truly support U.S. manufacturing and jobs, we must insist on a full vetting of all the potential consequences, intended and unintended, of proposed regulations.

2. Lack of transparency and sufficient stakeholder involvement in the regulatory process.

There has been an alarming trend over the last 2 years for agencies to issue "interpretations" or "interim final rules", which either require no, or very limited, public comment. The Administrative Procedures Act (APA), when followed appropriately throughout the rulemaking process, allows for numerous opportunities for stakeholder involvement, as well for the effects on small businesses and a cost-benefit analysis to be taken into account. The only way that an agency can adequately assess the effects of new regulations or changes to existing regulations is to fully consult with the regulated community and other stakeholders.

### ***Specific Current and Proposed Regulations of Concern to the Forging Industry***

Following are three examples of current and proposed regulations that we believe will negatively impact our ability to compete in the U.S.

## 1. EPA Regulation of GHG Emissions

Most forging work is done at temperatures up to 2300° F, with subsequent heat treating done at up to 1900° F, using natural gas, electric and/or induction furnaces. There are no alternative technologies available. As outlined above, FIA members are making critical parts for not only the energy sector, but for other sectors such as aerospace, defense, medical, and transportation. We cannot build those necessary components without adequate and affordable supplies of natural gas and electricity. While EPA's decision to start with large stationary sources means forgers only currently have to worry about the potential effect of these regulations on its suppliers in the metals industry, we are very concerned about future regulation of smaller sources. We should not be pushed into a regulatory system merely because we must use natural gas to make critical components. In addition, attempts to address climate change in a domestic manner rather than a global one will only succeed in making U.S. manufacturers less competitive.

## 2. OSHA – Proposed "Reinterpretation" of Noise Standard Enforcement

In general, the shift at OSHA from a more collaborative posture to a more adversarial approach toward business is very alarming. Many FIA members participate in federal and state OSHA voluntary programs, which are helpful to both the employer and employees. We would echo those points made by the National Association of Manufacturers (NAM) regarding a need for continued cooperation among OSHA and employers, regardless of the specific program.

Because of the noise inherent in forging processes where metal is pounded and pressed, we wanted to provide you with some specific comments on OSHA's recent announcement that it intends to redefine what is deemed "feasible" for employers to reduce overall noise in the workplace and requiring implementation of all such "feasible" engineering and administrative controls prior to allowing the use of personal protective equipment. OSHA's announcement states that all such "feasible" actions must be taken unless an employer can prove that making such changes will put it out of business. This action is a perfect example of an agency issuing what amount to significant rule changes with enormous consequences outside of the formal rulemaking process.

Today, OSHA allows employers to provide "personal protective equipment" such as ear plugs and ear muffs as part of an overall hearing protection program. In many cases, employers use a combination of engineering controls like sound-enclosures, noise-dampening equipment and muffling systems; administrative controls, and personal protective equipment. OSHA's announcement in October potentially means that it intends to enforce this new interpretation of "feasible" by issuing citations to employers without all "feasible" engineering and administrative controls in place, unless employers can prove to OSHA inspection officers that the changes would put their company out of business or would be impossible to make - a task for which there are no clear guidelines or standards. The OSHA notice included no data indicating that additional engineering and administrative controls are necessary to better protect workers' hearing, only that "feasible" should be defined as "can be done", regardless of benefit or cost.

Only after pressure from many stakeholders has OSHA agreed to extend the public comment period until March 21, 2011, and to hold one stakeholder meeting. However, it must be noted that because this announcement was made outside of the formal rulemaking process, OSHA is not required to take into account the stakeholder comments it receives and could begin enforcing its new interpretation as soon as March 22.

Because noise levels at 90 decibels or greater are an inherent part of our operations, the forging industry is well-versed in appropriate hearing conservation programs, including appropriate annual monitoring of our employees to ensure the effectiveness of our programs. But even with the use of state-of-the-art sound-dampening technology and appropriate administrative controls, in some cases, with some equipment, personal protective equipment will be necessary in place of engineering and

administration controls or in addition to them. Manufacturing in general and basic building blocks of manufacturing like forging in particular, are highly competitive global markets. Forgings can be made anywhere in the world. We need a regulatory process that allows for protection of our workers, which we think we currently do, without imposing undue burdens that don't provide additional protection but will negatively impact global competitiveness.

### 3. National Labor Relations Board Overreach

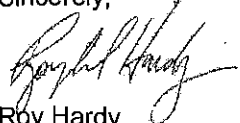
The following text is found on the website for the NLRB: *"In its statutory assignment, the NLRB has two principal functions: (1) to determine, through [secret-ballot elections,] the free democratic choice by employees whether they wish to be represented by a union in dealing with their employers and if so, by which union; and (2) to prevent and remedy unlawful acts, called [unfair labor practices,] by either employers or unions. The agency does not act on its own motion in either function. It processes only those charges of unfair labor practices and petitions for employee elections that are filed with the NLRB in one of its 51 Regional, Subregional, or Resident Offices"*

In spite of this clear definition of its role, today's NLRB appears ready to allow union organizers access to private property during working hours in order to attempt to organize employees; to promulgate regulations requiring private sector employers to notify employees of their rights to unionize under the National Labor Relations Act; and to constantly look for ways to increase the rights of labor unions over those of private sector employees. If the U.S. Congress believes that the National Labor Relations Act should be amended, then a transparent and deliberative legislative process should take place during which such legislation would pass or fail. Until then, the NLRB is supposed to ensure that secret-ballot elections are conducted freely and fairly in cases where employees are asked whether they wish to be represented by a union, and to rule on cases of alleged unfair labor practices when brought forth by employers or unions. That should be the extent of their activities.

FIA members have both union and non-union operations. Our members believe strongly in the rights of our employees to fair compensation and benefits, regardless of union affiliation. However, as employers, we must be able to operate our businesses without fear of retaliation, boycotts, and unfair actions by non-employee unions. We urge the Committee to remind the NLRB of its statutory role.

Chairman Issa, thank you for the opportunity to provide you with information on the forging industry and our concerns with current and pending regulations that threaten our ability to remain competitive in the U.S. We would be happy to provide you and your staff with additional information and we look forward to working with you in the future. Please do not hesitate to contact me at 216-781-6260 or [roy@forging.org](mailto:roy@forging.org); or Jennifer Baker Reid, FIA's Washington Representative, at 202-393-8524 or [jreid@thelaurinbakergroup.com](mailto:jreid@thelaurinbakergroup.com).

Sincerely,



Roy Hardy  
Executive Vice President



January 14, 2011

The Honorable Darrell Issa  
Chairman  
House Committee on Oversight and Investigations  
United States House of Representatives  
B350A Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Issa:

Thank you for the opportunity to provide comments about the potential oversight of regulations which impact the members of the Grocery Manufacturers Association (GMA).

GMA represents more than 300 food, beverage and consumer products companies that employ more than 1.6 million Americans in 30,000 facilities in all 50 states.

We believe the following areas would be appropriate for Congressional oversight:

- Obesity Spending -- The American Recovery and Reinvestment Act of 2009 granted \$650 million to local communities to fight obesity through the CDC's Communities Putting Prevention to Work initiative. In addition, the Patient Protection and Affordable Care Act established a \$2 billion Prevention and Public Health Fund through which CDC awards grants for similar programs.
- Biofuels Policy -- In November of 2010, EPA granted a Clean Air Act waiver that would allow fuel distributors to increase the amount of ethanol in gasoline from 10 to 15 percent. In addition, Congress has extended for one year corn ethanol subsidies, at a cost of nearly \$6 billion, and a tariff on imported biofuels.
- EPA Chemical Action Plans -- In September of 2009, EPA announced a comprehensive strategy for chemical management under the Toxic Substances Control Act (TSCA), including "action plans" for 12 chemical families.



- Livestock Marketing -- In June of 2010, the United States Department of Agriculture's Grain Inspection, Packers and Stockyards Administration (GIPSA) proposed a rule that would change the way livestock is marketed in the United States.
- Consumer Product Safety Improvement Act Implementation -- In 2008, Congress passed the Consumer Product Safety Improvement Act (CPSIA), which is currently being implemented by the Consumer Product Safety Commission. GMA believes it is important for Congress to fully review this law to determine its impact on businesses and consumers.
- Mexican Trucking -- The North American Free Trade Agreement (NAFTA) required the United States to allow Mexican trucks to operate across the border. In 2009, the elimination of a pilot project that allowed Mexican trucks to operate within the U.S. resulted in \$2 billion a year in retaliatory tariffs on many U.S. products.
- Hours of Service -- In December of 2010, the Department of Transportation proposed changes to regulations governing trucking hours of service. Proposed changes could increase transportation costs and ultimately the cost of many household products.
- Plant and Plant Product Imports -- The Food, Conservation, and Energy Act of 2008 amended the Lacey Act to place new requirements for importers of plants and plant products to provide detailed information about such imports with the goal of curbing illegal logging and plant harvesting activities.

We look forward to working with you on these and other important issues. Please do not hesitate to contact us for any additional information.

Sincerely,



Scott Faber

Vice President, Federal Affairs

**GROCERY MANUFACTURERS ASSOCIATION**

1350 I Street, NW :: Suite 300 :: Washington, DC 20005 :: ph 202-639-5932 :: [www.gmaonline.org](http://www.gmaonline.org)



## **Industrial Energy Consumers of America**

*The Voice of the Industrial Energy Consumers*

---

1155 15<sup>th</sup> Street, NW, Suite 500 • Washington, D.C. 20005  
Telephone 202-223-1661 • Fax 202-530-0659 • [www.ieca-us.org](http://www.ieca-us.org)

January 10, 2011

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

On behalf of the Industrial Energy Consumers of America (IECA), thank you for the opportunity to comment on the economic and jobs impact of existing and proposed regulations. We hope that your review will catalyze needed regulatory reform that focuses on costs and benefits. Industry data illustrates that operating in the US does place manufacturing at a competitive disadvantage and regulatory costs are a part of this cost disadvantage. The US has led the world in establishing environmental and safety regulations. It is now time for the US to lead again by reforming our regulatory system to one that is cost effective while achieving our nation's environmental and safety goals.

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with \$800 billion in annual sales and with more than 850,000 employees nationwide. It is an organization created to promote the interests of manufacturing companies through for whom the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: plastics, cement, paper, food processing, brick, chemicals, fertilizer, insulation, steel, glass, industrial gases, pharmaceutical, aluminum and brewing.

It is essential that manufacturers lower costs in order to compete globally and increase jobs. However, regulatory reform should not mean sacrificing the environment or safety. Common sense least-cost solutions that take life-cycle costs and benefits into consideration are desperately needed. We need to step back and set a new approach to how new regulatory requirements are structured and implemented.

IECA companies are proud of their environmental achievements. Many companies have corporate environmental goals that go beyond existing regulations. Companies have found cost effective ways to reduce their environmental footprint – take action and do so willingly. Our members understand that stewardship of the environment is everyone's responsibility and is not to be taken lightly.

First, we must recognize that existing environmental regulations have been successful at improving and are expected to continue to improve the environment across the board. EPA data shows remarkable and consistent national improvement which is why we are at an important cross road. Industry has been continuously reducing their environmental

footprint, which results in the next increment becoming increasingly costly in new capital and operating costs. There is a desire by manufacturing to continue to improve the environment but it must entail a cost effective solution. The reality is that if the costs are too high, manufacturing will not operate in the US. Plus, in the end, all costs are paid for by the ultimate consumer of the goods we produce. This delicate balance between higher costs and how much more is society willing to pay to reap a relatively small and smaller environmental gain is an increasingly difficult issue.

Attached is a list of the new regulations that confront IECA companies. We are cautious about classifying these as a priority because there are proposed rules that are not included that have serious implications for some companies and dire impacts. Additional information related to each of these initiatives can be found in the attached document.

Environmental Regulations:

- NAAQS revisions (short-term NOx, SOx, CO, Ozone and PM 2.5, PM coarse, and secondary NOx/SOx)
- Industrial Boiler MACT Standards
- Greenhouse Gas Regulation Under PSD/Title V; NSPS
- TSCA
- Clean Air Transport Rule
- Utility Boiler MACT Standards
- Coal Combustion Residual Rules
- Cooling Water Intake Regulations
- CISWI MACT
- Effluent stream conductivity limits proposed for CAPP coal
- Coal fly ash

Energy Regulations:

- FERC allocation of transmission costs

To be sure, the list is staggering and of great concern because each come with a cost and regulatory uncertainty. However, there are two critical aspects that can be lost in just looking at the list. First, each of the initiatives will result in significant costs in their own right, but taken together they will be devastating. The phrase "dying of a thousand cuts" has been used thru out industry to describe the concern. Secondly, the fact that many of these programs are interrelated, but have very different solutions, timetables and goals have resulted in so much regulatory uncertainty that investments in growth projects are virtually at a standstill.

Regulatory uncertainty is a major contributor to the dilemma as to why manufacturing companies are not investing capital in the US while they continue to spend capital in other countries. It takes several years and significant cost to get an environmental permit to modify an existing facility or build a new one - versus build right away in other countries. As a result, too often the US loses out to foreign countries and the product is imported versus produced here.

- A good example is New Source Review (NSR). When asked about NSR delays, IECA companies indicate that it takes less than a year to engineer a major project but the NSR permit can take between 18 – 24 months and cost hundreds of thousands of dollars. When you consider that most major projects will take a

year to construct, these delays mean that projects can take three to four years to complete. The implications of this time delay are great. We urge policy makers to fully understand that these companies are in competition with non-US companies who would be able to bring their new facility on line in less than two years. The significant time delays become a competitiveness issue for IECA companies and the US as a country who needs economic growth and jobs.

The cost of existing and proposed regulation is a serious issue. We do not know the basis of your cost estimate of \$28 billion for the 43 new regulations and \$1.75 trillion for existing regulations. We believe that this estimate is low especially if you add the lost economic opportunity costs of these regulations. As you will see from the data below, the manufacturing sector has been steadily under-investing in the US for some time. The truth is that the US has not been a good place for manufacturing to invest for a long time and regulatory costs are an important piece of those costs. Compared to nine major industrialized countries, US structural costs put the US at a 17.6 percent cost disadvantage.

- The proposed Industrial Boiler MACT regulation is another good example to illustrate why reform is needed. Industry data indicates that the proposed rule would cost \$20 billion in compliance costs and threaten thousands of jobs. IECA and many of its member companies have commented heavily on this proposal. The proposed regulations require significant capital investment that does not provide an economic return on capital and increases operating costs with relatively minor environmental gain if any. Even after making these capital expenditures it is uncertain that compliance with the standards can even be achieved. To expect the manufacturing sector to expend so many resources on a regulation to which compliance is uncertain is a clear indication that reform is necessary.

We often refer to capital expenditures without an economic return on capital as "dead money". This is capital that has many positive alternative potential uses such as building new facilities, increasing R&D, rewarding our employees or providing dividends to shareholders. For facilities on the margin, regulations like this are a catalyst for shutting down the facility.

Energy regulations that threaten to increase the cost of electricity are also a concern.

- A recent Federal Energy Regulatory Commission (FERC) decision is also on our list of proposed regulations because it will drive up the cost of electricity. Socialization of the costs of transmission upgrades at the wholesale level based on energy withdrawals from the system as advocated by the FERC in a recent decision in a MISO case (Docket No. ER10-1791-000) will burden high load factor industrial customers with a disproportionate share of the cost for any expansion project. Broad socialization of costs based on energy does not bear any rational relation to the drivers that motivate transmission expansion. An energy allocator is inconsistent with cost causation, is contrary to the FERC's development of locational based markets, is contrary to and in conflict with traditional cost allocation under the Open Access Transmission Tariff, will lead to wasteful usage of the transmission system and will disfavor efficient citing decision by generation sources. On the other hand, major allocation of costs on a differential basis to particular loads and resources provides an incentive for closer scrutiny of costs and much less willingness of utilities to push suboptimal

transmission projects through because it will only cost its ratepayers some diminimus amount of the total since the same customers must subsidize the cost of every other utilities' transmission project.

**There are several reasons why it is important for Congress to carefully review the cost and benefit of existing and new regulations.**

1. Our country and the manufacturing sector are locked in global competition with other countries and their manufacturing facilities - and both are losing relative economic ground.

Policy makers have taken US economic dominance and the manufacturing sector for granted for a long time and can no longer afford to do so. We must once again become a country that embraces the manufacturing sector with policies that foster capital investment, innovation and, when needed, implement cost effective regulations. Policy makers must act on a host of cost issues of which regulatory costs are one – and do so quickly to establish the US as a low cost place to operate.

For perspective, in 2000, the US was the world's largest supplier of manufactured goods at about 27 percent of the total. In 2008, the US dropped to 17.7 percent. Meanwhile, the Chinese government and many other countries in transition, hungry for economic growth and jobs, placed a priority on their manufacturing sector. China for example, supplied only about 8 percent of the worlds manufactured goods in 2000 and by 2008 rose to 17.3 percent. China's economic growth has increased between 8-10 percent per year in 2009 and 2010, China, not the US is now the largest supplier of manufactured goods.

2. The US needs jobs.

Because of the relative high cost of producing products in the US, the manufacturing sector has lost 5.4 million jobs in the last ten years. That is a 31 percent decline and represents the loss of about 600,000 jobs per year. Industry data indicates that each manufacturing job creates about three non-manufacturing jobs. This means the loss of 5.4 million manufacturing jobs impacted an additional 16.2 million non-manufacturing jobs for a total of 21.6 million jobs. It is estimated that about 47,000 manufacturing facilities have been shut down and with significant economic and social costs to the country. During this entire ten year period the pleas from the manufacturing sector went unheeded. We urge attentive listening and then political action because there is no guarantee that job losses have bottomed out or that imports have peaked.

3. The US needs the manufacturing sector capital investment to spur long term economic growth.

We are all aware that many manufacturing companies, at this time, have significant cash reserves. So why aren't they spending in the US? The fact is that in general, the US has not been a good place to invest, versus other countries because of high costs.

This is not new. Manufacturing companies began to under-invest starting in the late 1990s. The Bureau of Economic Analysis indicates that long term investment in industrial equipment as a percent of GDP averaged about 2 percent of GDP. Since

2000, manufacturing industrial equipment investment dropped significantly by about one-third and continues to accelerate.

4. Confidence is needed in EPA's modeling of costs versus benefits.

Industry views EPA's modeling of costs and benefits as controversial. We urge the Congress to examine EPA's methodology and take action to provide oversight and confidence that regulations are needed and that the costs are a fair estimate.

In closing, we urge you to review the policies in the IECA's Sustainable Manufacturing & Growth Initiative (SMGI) that illustrates how environmental improvement can be achieved thru incentives and removal of regulatory barriers while significantly increasing capital investment, economic growth and jobs. SMGI illustrates that the US can reduce energy-related GHG emissions by 13% in 2020 thru industrial energy efficiency. This reduction level is about equal to what the cap & trade bills proposed to do. However, our approach has other significant economic benefits, such as:

- Increased real GDP by \$77 billion in 2020.
- Increased cumulative employment by 9.4 million job-years in 2010-2030.
- Increased cumulative private investment by more than \$1 trillion in 2010-2030.
- Increased family income by an average of \$788 (0.68%) in 2020.
- Increased cumulative net exports by \$392 billion in 2010-2030.

Furthermore, it is estimated that the net fiscal cost associated with the IECA policy recommendations will be less than 0.1% of discretionary government spending between 2011-2030. And, it is estimated that the policies will result in a cumulative increase in real GDP growth that is approximately 20 times greater than the cumulative net fiscal cost - providing U.S. taxpayers with significant "bang for the buck".

We look forward to working with you in the weeks and months ahead to examine the relationship between economic growth, jobs and existing and proposed regulations. We believe that economic growth should not jeopardize the clean environment that we all desire.

Sincerely,



Paul N. Cicio  
President

Attachment

Major Rule Category	Rule	Timeline	Reasons affect growth & jobs	Value-added Benefits to Society
MACT/GACT	Boiler MACT: Related rules (a suite) are definition of solid waste (NHSM), and Commercial and Industrial Solid Waste Incinerators (CISWI)	Final Rule 7/11	Significant capital and operating costs and job losses.	Debatable and theoretical health gains at enormous costs.
	Cement	Final Rule 8/10/10		
	Steelmakers	Final Rule 07/11		
NAAQS	Ozone	Final Rule?	Tightening standards provides little or no health effects over current limits. Extending non-attainment areas and forcing LAER and offsetting emissions requirements instead of BACT, caps growth and impedes economic progress over much of the country.	Debatable and theoretical health gains at enormous costs.
	1-Hr NO2/SO2	Rules Final in 2010	Use of modeling results instead of monitoring data to identify non-attainment areas.	None. Modeling results are conservative and will identify more non-attainment areas resulting in higher costs for business and discouraging economic growth and development.
	Secondary NO2/SO2	Draft Rule 07/11 Final Rule 03/12	Tightening standards provides little or no health effects over current limits. Extending non-attainment areas and forcing LAER/offsets instead of BACT impedes growth in many areas.	Debatable and theoretical health gains at enormous costs.
	PM	Final Rule 07/11	Tightening	Debatable and theoretical

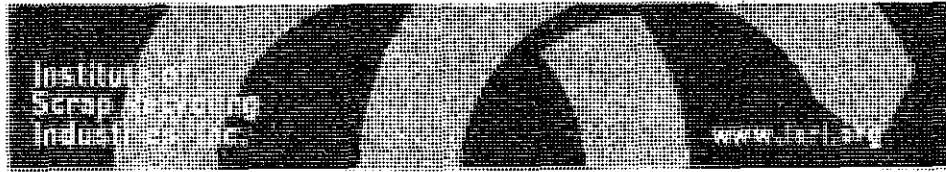
			standards provides little or no health effects over current limits. Extending non-attainment areas and forcing LAER instead of BACT impedes growth in many areas.	health gains at enormous costs.
	CO	Draft Rule 02/11 Final Rule 07/12	Tightening standards provides little or no health effects over current limits. Extending non-attainment areas and forcing LAER instead of BACT impedes growth in many areas.	Debatable and theoretical health gains at enormous costs.
	Transport Rule	Draft Rule 9/2010 Final Rule expected early 2011	Limits NOx and SO2 emissions within 32 states in the eastern US to attain and maintain compliance with the PM2.5 and ozone NAAQS. The proposed rule addresses utilities but EPA may address industrial sources in future rulemakings (e.g. Transport 2)	
CO2/GHG Rules	Reporting Rule	Rule Implementation 03/11		
	Tailoring Rule	Rule Implementation 01/11		
	Carbon Neutrality	Call for Information on GHG Emissions Associated with Bio-energy and Biogenic Sources. 8/10	Current EPA regulation of GHGs under the Clean Air Act (CAA) does not differentiate biogenic from fossil-based carbon dioxide.	No health benefit. Without recognizing the long standing principle of carbon neutrality, permitting biogenic renewable energy projects will be more difficult. Renewable energy projects using biomass may be disadvantaged.



			EPA will be developing an accounting approach for biogenic emissions under the CAA Prevention of Significant Deterioration (PSD) and Title V programs and issuing guidance to States in early 2011. EPA has indicated not all biomass is created equal in terms of carbon neutrality.	
	Tailpipe Rule	Rule Implementation 01/11		
	Johnson Memo reconsideration	?/11		
	GHG NSPS standards for Utilities and refineries	Utility rule – draft July 2011; Final May 2012  Refineries – draft December 2011; Final November 2012		
NSPS	Utility Power Plant	Draft Rule 12/10 Final Rule		
	Refinery	Draft Rule 07/11 Final Rule 07/12		
	Oil & Gas	Draft Rule 01/11 Final Rule 11/11		
	Cement	Final Rule 8/10/10		
	Pulp and paper	Final rules 2011		
Integrated Rules	Pulp and Paper	Final Rule 05/11		EPA requiring very extensive Clean Air Act 114 survey request to gather data from individual facilities that EPA claims is needed for this rule making. Very short survey turn-around time and a lot of data and information gathering required by each facility.
	Wood Products	2012		

Air Toxics	Iron & Steel Foundries Residual Risk Rule	07/13		
	Al Residual Risk Rule	2013		
	Polymers and Resins Residual Risk Rule	2013		
	Auto and Truck Painting Residual Risk Rule	2013		
	Pulp & Paper Residual Risk	Draft Rule 6/11 Final Rule 12/11 (Court ordered deadlines)		
	Cluster Rule and other 34 existing MACT rules re-do	?	Petitions filed by ENGOs based on recent court decisions on MACT rules.	
	SSM Provisions		Due court vacating SSM provisions in 2008, EPA has begun including affirmative defense to address emissions that occur during malfunctions. With the vacating of the SSM provisions, excess emissions at any time are violations.	Little or none. Increased administrative burden for business and potential loss of operating flexibility.
Regional Haze	SIP updates	Due 05/13		
Area Source Rule	40 CFR 63, Subpart YYYYYY EAF steelmakers	7/11	Imposes tighter limits and unproven APC technology on market-stressed industry.	Tightening Hg standards provides little or no health effects over current limits.
RCRA, Haz. Mat.	Definition of Solid Waste	Revised Rule 12/12	Keeps current inflexibility in RCRA rules for recycling materials. Prior rule was 15 yr public process product with stakeholder approval spanning Clinton and Bush	None. Limits new recycling technology and material handling business startups.

			Administrations.	
TCSA	Inventory Use Rule (IUR)	Final Rule, 07/11	Administrative burden and waste of resources. Tracking uses of substance thru entire supply chain is of no-value added to society.	Little or none. IUR is a redundant rule. Information on risks of substances in products available thru Product Labels, MSDS, and Product Safety documents.
CERCLA	Financial Assurance			
Effluent Limitations Guidelines	Steam Electric Power Plants			
Nutrient water standards (TMDLs and NPDES permits)	Industry Manufacturing Agriculture Forestry Farming Animal Husbandry	Florida, Chesapeake Bay under development, Mississippi River system and Gulf of Mexico under study	Stringent modeled waste water load allocations stifle growth and may eliminate existing industry. Area sources (agriculture) affected too.	Improvements to already productive fisheries in the gulf, bay and other affected water systems. Search for near zero impact is impractical.
Listing of hydrogen sulfide as a HAP	Refining Oil and gas production Pulp and paper	Possibly 2011/12	Debatable science on chronic health affects and threshold effect levels.	Wider margin of safety for public.



January 10, 2011

Chairman Darrell Issa  
Committee on Oversight and Government Reform  
United States House of Representatives  
Washington, DC 20515

Dear Chairman Issa:

Thank you for the opportunity to identify existing and proposed regulations that have negatively impacted job growth in the United States and suggestions for reforming these regulations and administrative practices. Job growth in the scrap recycling industry has been negatively affected by a number of regulations over the years. We highlight three specific examples in our response:

1. Regulatory uncertainty created by EPA under TSCA, impeding expanded plastics recycling and the resultant investments in building, equipment and jobs;
2. Proposed legislative and regulatory efforts to restrict the global electronics recycling marketplace, including the export of electronics for recycling; and
3. Misguided interpretation of §199 of the American Jobs Creation Act of 2004 by the Internal Revenue Service (IRS) to exclude recyclers as manufacturers, resulting in significant increased tax liabilities and potential job losses within the recycling industry.

ISRI represents nearly 1,600 private, for-profit companies operating at more than 7,000 facilities in the United States and 30 countries worldwide that process, broker, and industrially consume scrap commodities, including ferrous and non ferrous metals, paper, plastics, glass, textiles, rubber and electronics. It is estimated that ISRI members directly employ more than 100,000 people with well-paying jobs here in the United States, and their companies range in size from small, family-owned businesses, to large, publicly-held corporations with multiple facilities worldwide.

The chart below illustrates the size and scope of the scrap recycling industry, including the contribution the industry makes to the United States' balance of trade. Presented is two years worth of data in an effort to illustrate the industry's contribution to the United States economy both before and after the onset of the most recent global recession.

	2008	2009
Industry Size	\$84 Billion	\$54 Billion
Employment (yearly average)	114,300	105,400
Volume of Scrap Processed Annually in the US (metric tons)	85,000,000	71,000,000
Scrap exports - value	\$28.6 Billion	\$21.4 Billion
Scrap exports - metric tons	44,000,000	46,000,000

Iron & Steel	18,865,413	20,011,795
Paper	18,255,326	19,142,093
Aluminum	1,981,644	1,657,606
Copper	908,103	842,573
Nickel, Stainless and Alloy	2,717,708	2,419,904
Plastic (Bottles only)	472,766	579,568
Number of Countries Scrap was Exported to and Leading Destinations/Value	153 Countries	154 Countries
China	\$8.0 Billion	\$7.4 Billion
Canada	\$4.0 Billion	\$2.6 Billion
Turkey	\$2.0 Billion	\$0.9 Billion
South Korea	\$2.0 Billion	\$1.4 Billion
United Kingdom	\$1.9 Billion	\$0.7 Billion
Switzerland	\$1.7 Billion	\$3.3 Billion
Taiwan	\$1.6 Billion	\$0.9 Billion
Japan	\$1.0 Billion	\$0.3 Billion
Germany	\$1.0 Billion	\$0.4 Billion
Mexico	\$0.9 Billion	\$0.6 Billion

The scrap industry is an important contributor to this country's international competitiveness. At a time when the U.S. economy is struggling, and a premium is being placed on creating economically and environmentally sustainable jobs, the scrap recycling industry is providing solutions.

#### **Impact of TSCA Regulations on Investments/Job Creation Related to Plastics Recycling**

The implementation by the US Environmental Protection Agency (EPA) of the regulations promulgated under the Toxics Substances Control Act (TSCA) has been a longstanding regulatory barrier to the beneficial recycling of plastics from automobiles and appliances and the related investment by the industry in equipment, buildings and jobs. A recently completed economic impact study performed by Nathan Associates Inc. documents the following economic benefits of allowing the recycling of the estimated 1.75 million tons of plastics that are available to recover and process annually (see Appendix A for the study's executive summary)-

- \$946.7 million of new spending on equipment;
- \$247.9 million of new spending on construction industry services;
- 23,746 new jobs; and
- \$1.1 billion of additional gross earnings of employees

These economic benefits are all in addition to the environmental benefits of recovering and using the plastic, rather than throwing it away in landfills and using imported oil to manufacture new plastic.

The regulatory uncertainty of whether or under what conditions one may physically separate plastics from shredder aggregate for purposes of recycling is frustrating since there have been a number of attempts over the past decade or so to resolve this issue with EPA. This regulatory uncertainty has halted the separation and recovery of these valuable materials. Moreover, though the United States is the leader in this technology, other nations are moving ahead and gaining a global competitive advantage, and in many instances are even using US technology in their countries (including in both Europe and Asia), to recover these materials. Achieving regulatory certainty would lead towards the creation of literally thousands of "green collar" jobs in the United States.

**Background** - It has been more than 30 years since the passage of TSCA and the subsequent promulgation of regulations implementing the statute. In the interim period, there have been significant developments in our understanding of PCBs in the environment, as well as their presence in the stream of commerce. During this time there also have been technological developments within the recycling industry that now allow for the environmentally beneficial separation and recycling of plastics from the shredding of automobiles and appliances, using processes that also are able to reduce the level of PCBs that may be present to a level at or below that which poses no unreasonable risk.

ISRI's members play a major role in the recycling of vehicles, appliances and other manufactured products. The recycling rate for appliances in the US is 90%, and for automobiles it is 106% (more automobiles are recycled than are manufactured in the U.S.). This is accomplished through a long-standing, market-driven recycling infrastructure, with no added cost to consumers or taxpayers. Most recently, this recycling infrastructure was central to the U.S. government's "cash for clunkers" programs for automobiles, intended to create jobs and conserve energy through the sale of new and more efficient products.

The scrap recycling industry operates over 240 automobile/appliance shredders in the U.S. Their operations are responsible for the recycling of between 12 and 17 million automobiles, as well as 45 million appliances, each year, producing up to 18 million tons of the approximately 80 million tons of ferrous scrap produced in the U.S. every year. Shredded scrap metal is the primary feedstock to the mini-mill (electric arc furnace) steel industry, and is the source for two out of every three pounds of new steel produced in the U.S. The recycling of metals produced from shredding operations eliminates the need to mine, transport, and refine vast quantities of metal ore, thus significantly decreasing the environmental impacts and energy consumption associated with virgin metal production.

A number of shredders and others in the U.S. have made multi-million dollar investments in research and development to determine the most economical and technologically feasible manner for the separation of the plastics out of the shredder aggregate stream to meet growing market demand for the material. A number of proprietary technologies have been developed for successfully recycling the plastic into commercial grade feedstock. The U.S. government itself, led by Argonne National Laboratory, has been involved in a nearly 20-year effort to develop such technologies, and has evaluated a variety of technologies that can separate many types of polymers from shredder aggregate.

TSCA prohibits the use or distribution in commerce of polychlorinated biphenyls (PCBs) in any concentration unless EPA has authorized such activities, based upon a finding that they do not pose an unreasonable risk. ISRI believes that EPA's existing PCB regulations do provide the necessary authorization to allow for the recovery and reuse of plastics that may contain very low levels of PCBs, but there is sufficient ambiguity to discourage the necessary investments. Unfortunately, EPA has been unwilling to confirm that the recycling of plastics from automobile and appliance shredding is authorized under TSCA. This has discouraged the significant capital investments necessary for the widespread recycling of plastics from shredder aggregate and the environmental and economic benefits that would result. The construction and implementation of a plastics separation and recycling plant requires multimillion dollar investments in highly technical equipment as well as infrastructure, buildings, land and labor. No one is willing to make that kind of investment without the certainty that doing so will not run afoul of EPA's regulations governing PCBs.

Technologies exist today to separate recyclable plastics from shredder aggregate and reduce levels of PCBs in the plastic down to trace levels. For example, grants from the U.S. Department of Commerce have helped fund the development of a proprietary technology by one private company based in the United States that reduces the concentrations of PCBs in plastics recycled from shredder aggregate down to trace levels. Ironically, that technology, developed in part with the assistance of the U.S. government, is now used commercially in Europe, but is difficult to fund and install in the U.S. because of the uncertainty over the TSCA regulations.

Other technologies have been and are being developed in the private sector that are the result of ingenuity and innovation both within the scrap recycling industry itself and by others using quite advanced proprietary technology available for use in Europe and elsewhere but not in the U.S. due to the existing regulatory uncertainty. The U.S. government, through the Argonne National Laboratory, has worked closely with the recycling industry to evaluate some of these technologies, finding that they can consistently reduce PCB concentrations in recycled plastics to very low levels. However, these opportunities cannot effectively be financed and realized here in the U.S. without EPA confirming that such recycling activities are allowed in order to provide the certainty that will support the hundreds of millions of dollars in capital investments necessary to commercialize this technology.

**Summary** – The recycling industry needs the Congress to step in and indicate that EPA should remove the current regulatory barriers that are impeding the investment in plastics recycling plants and related jobs by promptly clarifying that current regulations allow the beneficial recycling of plastics.

### **Electronics Recycling and Exporting**

**Background** - In today's global economy, voluminous amounts of new and used electronic devices are being manufactured, sold and used and ultimately meeting the end of their useful lives. Obsolete consumer electronic equipment levels are expected to increase to 400 million units annually during the rest of the decade, including 100 million units of computer equipment. Industry experts estimate that by combining both consumer and non-consumer computer equipment (commercial, industrial and government sectors), that more than 2 billion will become obsolete over the next five years.

Recycling obsolete electronics is the fastest growing sector in the recycling industry. Electronics recyclers make their living scrubbing and reselling hard drives, by testing and then reselling cell phones, monitors and CPUs that are in good working order, and using machinery and equipment to shred or otherwise process electronics to extract the various commodities that are contained in electronic equipment including steel, aluminum, gold, silver, titanium, copper, nickel, plastic and glass – for use as valuable raw material feedstock in the manufacture of new products.

Accordingly, exporting is vital to the electronics recycling industry because most markets for these refurbished products and recycled materials are outside of the U.S. As a result of this global demand, there exists today a vibrant, established, global recycling infrastructure that relies on environmentally sound management practices for the recovery of the various commodities that are contained in electronic equipment—including steel, aluminum, gold, silver, titanium, copper, nickel, plastics and glass—for use as valuable raw material feedstocks in the manufacture of new products.

Unfortunately, there remain a few bad actors or “sham” recyclers on the global marketplace that engage in illegal pollution practices under the guise of reuse and recycling. As such, ISRI and its members developed comprehensive policy that strongly condemns “sham” recycling and illegal exports to countries and facilities that lack the necessary expertise to properly recycle or use the materials. ISRI members also condemn the export of electronics intended for landfilling or incineration for disposal.

Consequently, at the behest of the EPA, ISRI along with electronics manufacturers, states, and consumer protection and environmental non-governmental organizations, worked together over the past three years to develop sustainable and responsible recycling practices to help ensure that used and end-of-life electronics are properly recycled to protect the environment and health and safety of workers. The result is a voluntary consensus standard, the Responsible Recycling Practices of Electronics Recyclers (R2), that was facilitated and supported by the EPA and has been accredited by the ANSI-ASQ National Accreditation Board (ANAB) as a third party auditable standard. ISRI has since combined the R2 program with its Recycling Industry Operating Standard® (RIOS) to create the Certified Electronics Recycler® (*see [www.CertifiedElectronicsRecycler.com](http://www.CertifiedElectronicsRecycler.com)*). This program allows recyclers to integrate the sustainable practices of R2 into a comprehensive quality, environmental, and health & safety management system provided within RIOS. Many of the 350 ISRI member companies that handle electronics are already certified or working hard to be certified to R2. These companies have embraced R2 because the standard protects the environment and health and safety of workers and was negotiated in an open, transparent process in concert with a multi-stakeholder group, most importantly the federal government led by EPA.

***Proposed Regulatory Efforts*** - Unfortunately, some in the environmental community abandoned the EPA-led initiative before its completion and have instead worked to undermine the regulatory certainty this certification program presents to recyclers, exporters and global consumers of scrap. These environmental groups have urged EPA to eliminate the R2 program and codify an industry wide ban on exports of used and end-of-life electronics that would disrupt legal trade and undermine longstanding, hard-fought regulation within the Resource Conservation and Recovery Act. These groups have also convinced a few Members of Congress to introduce ill-conceived legislation that would place unnecessary restrictions on recyclers who lawfully and responsibly export their products.

Eric Williams of Arizona State University writes in a March 2010 report that, “Trade bans will become increasingly irrelevant in solving the problem” and argues that a complete ban on export of used and end-of-life electronics to developing countries fails to solve the problem because the developing world will generate more used and end-of-life electronics than developed countries as early as 2017.

***Economic Impacts*** - Banning exports of end-of-life exports will detrimentally harm the fastest growing sector of the US recycling industry, reduce important US exports, and slow the further creation of these “green jobs” in the United States. Additionally, the regulatory uncertainty caused by these harmful efforts could possibly extend to other sectors of the scrap recycling industry that have relied on exports for over 100 years by restricting access to ever-growing overseas markets.



## **Section 199 of the Internal Revenue Code and the Internal Revenue Service's Interpretation Thereof**

**Background** - A little over six years ago Congress passed the American Jobs Creation Act of 2004 ("Jobs Creation Act"). Title I of the Jobs Creation Act had two purposes: first, it repealed the Exclusion for Extraterritorial Income as required by a decision of the World Trade Organization and second, it added § 199 to the Internal Revenue Code of 1986. Section 199 was intended, in part, to compensate U.S. exporters for the tax benefits they would lose as a result of the repeal of the exclusion for extraterritorial income and also to encourage certain businesses to create jobs. Unfortunately, the IRS has interpreted § 199 to effectively read it out of the statute for scrap recyclers, subjecting scores of recyclers to millions of dollars of back taxes.

**Misguided Regulatory Interpretation** - The Jobs Creation Act grants the deduction to those who lease, license, rent or sell "qualifying production property which was manufactured, produced, grown, or extracted by the taxpayer in whole or in significant part within the United States."<sup>1</sup> The term "qualified production property" (QPP) is defined as tangible personal property, computer software and "any property described in section 168(f)(4)."<sup>2</sup> The Congress did not define the terms manufacture, produce, grow or extract. However, the Internal Revenue Service (IRS), when writing the regulations for § 199 elected to define those terms as follows:

(e) *Definition of manufactured, produced, grown, or extracted*—(1) *In general.* Except as provided in paragraphs (e)(2) and (3) of this section, the term *MPGE* includes manufacturing, producing, growing, extracting, installing, developing, improving, and creating QPP; making QPP out of scrap, salvage, or junk material as well as from new or raw material by processing, manipulating, refining, or changing the form of an article, or by combining or assembling two or more articles; cultivating soil, raising livestock, fishing, and mining minerals...<sup>3</sup>

The exceptions contained in paragraphs (e)(2) and (3) of § 1.199-3 relate to packaging, repackaging, labeling, or minor assembly and installation, respectively. The regulation explicitly provides that QPP made out of scrap or salvage qualifies for the deduction and nowhere does it specifically exclude scrap recycling from the definition of manufacturing or producing. Unfortunately, the IRS, in its ultimate wisdom apparently issued instructions from headquarters to the field staff directing the field staff to deny, out of hand, any §199 deduction taken by a scrap recycler. The result has been that scores of our members are facing millions of dollars in back taxes for having, in good faith, taken the § 199 deduction.

IRS' denial of these deductions is inconsistent with Congressional intent, IRS' own regulations, and common sense. The scrap recycling industry is one of the nation's leading exporters. A significant number of our members had benefitted from the exclusion of ETI without any challenge. Congress created §199 not only to compensate for the loss of the ETI exclusion by industries that claimed it, but to also benefit a much larger group of manufacturers. Yet, under IRS' arbitrary reading, the recycling industry that had benefitted from the ETI exclusion, and therefore was clearly intended to benefit from § 199, is being excluded by the IRS from the benefit of the § 199 deduction!

Further, at the common sense level, *Webster's New Collegiate Dictionary* defines manufacture as, among other things, "to make into a product suitable for use" or "to make from raw materials by hand or by machinery." *Webster's* goes on to define "produce as, among other things, "to give being,

<sup>1</sup> 26 U.S.C. 199(c)(4)(A)(i)(I)

<sup>2</sup> 26 U.S.C. 199(c)(5)

<sup>3</sup> 26 C.F.R. 1.199-3(e)

form or shape to." It is plainly evident that a scrap recycling facility is engaged in manufacturing. Indeed, to our knowledge, every state that offers an exemption from sales tax for manufacturers' purchases of machinery and equipment used in the manufacturing process has afforded that exemption to scrap recyclers. In seven states where the issue was litigated, the state supreme courts ruled in favor of the industry. Another eight states have granted the exemption through Administrative decisions. At least two states, Utah and Arkansas, actually passed legislation specifically addressing the issue—the Arkansas legislature having taken action as a result of a judicial decision to the contrary! While the federal government is not bound by state precedent, I would contend that if reason prevailed the IRS would at the very least give credence to the fact that this issue has been vetted a significant number of times.

We have been negotiating with the IRS on behalf of our industry for over one year now and have made little substantive progress. If the IRS does not act in a sensible manner, we are sincerely concerned about a significant loss of U.S. jobs and exports. Any assistance you or your committee could provide with regard to this issue could stave off these potential losses.

#### **Conclusion**

The scrap recycling industry greatly appreciates your interest in investigating and exploring ways to remove or reduce unnecessary regulatory uncertainties that harm the US economy and job growth. We look forward to working with you and your staff over the coming months to explore how we can help remove these regulatory uncertainties that hamper job creation in the United States.

Sincerely,

A handwritten signature in black ink, appearing to read "Robin Wiener", with a stylized, cursive script.

Robin K. Wiener  
President, ISRI

cc: The Honorable Edolphus Towns, Ranking Member

## **Attachment A**

### **Executive Summary**

#### **Economic Impacts and Environmental Benefits of Separating, Sorting, Processing, and Recycling Plastics in the Automobile and Appliance Shredders Aggregate**

**Prepared By Nathan Associates, Inc.**

**December 21, 2010**

FINAL REPORT

Economic Impacts and Environmental  
Benefits of Separating, Sorting, Processing,  
and Recycling Plastics in the Automobile and  
Appliance Shredder Aggregate



Robert Damuth  
Economist and Principal Consultant  
Nathan Associates Inc.

DECEMBER 21, 2010

# Executive Summary

Current Environmental Protection Agency (EPA) regulations create uncertainty over and barriers to recycling plastics in the appliance and automobile shredder aggregate. The result is that these plastics are disposed of in landfills.

If material separation facilities were allowed to separate plastics from the shredder aggregate and sell the material as recycled plastics, they would have an incentive to invest in new equipment and facilities to house the equipment. Such investment would stimulate the economy.

In addition, recycling the plastics instead of disposing of them in landfills would have environmental benefits.

The economic and environmental benefits would be in keeping with economic policy goals of spurring innovation and growth.

Nathan Associates Inc., an economics research firm founded in 1946, analyzed and estimated the economic impacts and environmental benefits of separating, sorting, processing, and recycling plastics in the shredder aggregate currently disposed of in landfills. Using expert opinions of material separation industry leaders, Nathan Associates quantified the amount of plastics likely to be recovered annually, the new investment spending on equipment embodying the technologies capable of separating, sorting, and processing plastics in the shredder aggregate, and the new construction spending on facilities that would house the new equipment. Nathan Associates also analyzed spot prices of virgin plastic resins to determine a price of recycled plastics and material separation industry sales revenue.

Once new spending on equipment, facilities, and recycled plastics were estimated, Nathan Associates applied the industry-by-industry total requirements table of the U.S. input-output accounts, which is published by the U.S. Bureau of Economic Analysis, to estimate total industry output<sup>1</sup> generated directly and indirectly by the new spending. Using ratios of jobs

---

<sup>1</sup> Output includes intermediate and final sales of goods and services. Intermediate sales are industry-to-industry. Final sales are industry to consumer.

per million dollars of output and employee earnings per million dollars of output, Nathan Associates also estimated total jobs and earnings effects.

On the basis of industry expectations of 1.75 million tons of plastics separated, sorted, processed, and recycled annually, Nathan Associates estimated the following initial economic impacts:

- \$946.7 million of new spending on equipment produced by machinery manufactures,
- \$247.9 million of new spending on construction industry services, and
- \$1.3 billion of additional material separation facility sales revenue from sales of recycled plastics.

This new spending will have total economic impacts of

- \$5.3 billion of additional economic output,
- 23,746 new jobs, and
- \$1.1 billion of additional gross earnings of employees.

Approximately half (\$2.4 billion of output, 12,471 jobs, and \$529.2 million of earnings) of the total economic impacts are generated by new spending on recycled plastics. Unlike the economic impacts of new investment spending on equipment and facilities, which are impacts that expire once the equipment is manufactured and sold and the construction of new facilities is completed, new spending on recycled plastics occurs annually. Hence, impacts occur annually. In addition, an annual supply of less costly recycled plastics will spur new product innovation. Already, recycled plastics have promoted development of plastic lumber.

There are additional economic impacts not included in the Nathan Associates study. Chief among these are tax revenues collected on industry sales and business and household earnings, as well as U.S. balance of trade effects. Exports of recycled plastics or substitution of domestic recycled plastics for imports would make a positive contribution to the U.S. trade balance.

And finally, environmental benefits will accrue from using 1.75 million tons of recycled instead of virgin plastics. Such benefits include:

- Annual savings of 171.5 trillion Btus of energy, which is equivalent to the energy content of 1.5 billion gallons of gasoline.<sup>2</sup> At an average fuel efficiency of 21 miles per gallon and an average of 12,000 miles traveled per year, an auto consumes 571 gallons of gasoline annually. An annual savings of 1.5 billion gallons of gasoline is equivalent to removing 2.6 million autos from the road each year.

---

<sup>2</sup> One U.S. gallon of gasoline is equivalent to 115,000 Btu. See Bioenergy Conversion Factors at [http://bioenergy.ornl.gov/papers/misc/energy\\_conv.html](http://bioenergy.ornl.gov/papers/misc/energy_conv.html).

- A savings of 28,525,000 barrels of oil each year.<sup>3</sup> At \$75 per barrel, the savings is equivalent to \$2.1 billion.
- A savings of 52.5 million cubic yards of landfill space each year. For significance, consider the fact that, in Michigan, 50 million cubic yards of solid waste are produced annually and, each year, 57 million cubic yards of solid waste are added to Michigan landfills.<sup>4</sup>
- Each year, 1.75 million to 5.25 million tons of carbon dioxide would be saved. An average medium size automobile with fuel efficiency of 21 miles per gallon traveling 12,000 miles per year emits 6.6 tons of carbon dioxide.<sup>5</sup> Hence, the carbon dioxide savings is equivalent to removing 265.2 thousand to 795.5 thousand automobiles from the road each year.
- Recycling 1.75 million tons of plastics annually will save 39.9 billion gallons of water each year. In the United States, a typical person consumes 123 gallons of water daily or 44,895 gallons per year.<sup>6</sup> The water savings of recycling 1.75 million tons of plastic annually is equivalent to the amount of water used each year by 888,740 people.

In summary, as the U.S. economy works its way out of the global recession, the economic impacts and environmental benefits of allowing separating, sorting, processing, and recycling of plastics in the shredder aggregate would provide new jobs and incomes, promote innovation and growth, and help achieve a greener economy.

---

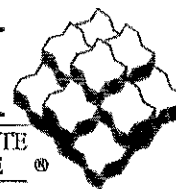
<sup>3</sup> Barrels saved are equivalent to nearly one-half of one percent of the total number of barrels of crude oil and petroleum products consumed in the United States in 2009 (6,851.6 million barrels). See [http://tonto.eia.doe.gov/dnav/pet/pet\\_cons\\_psup\\_dc\\_nus\\_mbbbl\\_a.htm](http://tonto.eia.doe.gov/dnav/pet/pet_cons_psup_dc_nus_mbbbl_a.htm).

<sup>4</sup> See <http://www.michiganwasteindustries.org/about/industry-background/faq-frequently-asked-questions/>.

<sup>5</sup> See <http://www.carbonify.com/carbon-calculator.htm>.

<sup>6</sup> See "Energy - How Much Water Does An Average Person Use Each Day?" Science Fact Finder, Phillis Engelbert, ed., UXL-Gale, 1998, eNotes.com, 2006, October 17, 2010 available at <http://www.enotes.com/science-fact-finder/energy/how-much-water-does-an-average-person-use-each-day>.

# ICPI



INTERLOCKING CONCRETE  
PAVEMENT INSTITUTE ®

**U.S. OFFICES CANADA**

13921 Park Center Road, Suite 270	P.O. Box 85040
Herndon, VA 20171	561 Brant Street
Email: <a href="mailto:ICPI@icpi.org">ICPI@icpi.org</a>	Burlington, Ontario
Web: <a href="http://www.icpi.org">www.icpi.org</a>	CANADA L7R 4K2
Tel: (703) 657-6900	Fax: (703) 657-6901

January 7, 2011

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

Dear Mr. Chairman,

On behalf of the Interlocking Concrete Pavement Institute (ICPI), I would like to congratulate you for your selection as Chairman of the Committee for the 112<sup>th</sup> Congress.

Further, I thank you for your kind outreach to ICPI soliciting key regulatory issues for oversight hearing consideration, per your letter of December 29, 2010.

ICPI represents over 150 manufacturers and suppliers and over 14,000 contractors in the construction and construction products manufacturing industries. In the U.S., the interlocking concrete pavement industry employs circa 154,000 people and generates over \$5 billion in revenues per year.

Concrete paver manufacturers make concrete paving units that are placed into interlocking concrete pavement systems for low speed roads, pedestrian sidewalks, plazas, driveways and patios. These pavement systems are the preferred choice for sustainable and environmentally friendly pavements in North America.

Interlocking concrete pavement systems are a "green" pavement technology, facilitating public policy initiatives to reduce stormwater runoff, improve water quality, reduce flooding, and enable increased use of trees and shrubbery in construction/development.

As you know, OSHA is in the process of promulgating a major regulation regarding exposures to respirable silica in the workplace. OSHA has indicated in its latest public communications that it hopes to publish a proposed regulation in April 2011.

Of course, the regulation has not been published at this time; its substance is not yet available for comment. However, many in the regulated community have been concerned with the manner in which OSHA has conducted its peer review process which provides the foundation for a proposed regulation.



The Honorable Darrell Issa  
January 7, 2011  
Page 2

In brief, many in industry are concerned that the peer review process did not actively seek, nor accept requests from industry representatives to participate in the peer review. OSHA's execution of the peer review process itself has raised questions.

To the extent that the proposed regulation establishes a critical baseline for regulation even in the pre-publication stage, the peer review -- and its dominant influence on an ultimate silica proposal -- is a key stage and should include active, robust involvement from the economic community that the silica regulation will seek to regulate.

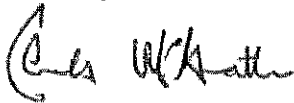
OSHA observes that a silica regulation will be "economically significant", which is an understatement. As you know, silica is one of the most abundant substances on earth and is ubiquitous in the environment. Tens of thousands of firms, and a large portion of the economy, could be impacted by an unduly broad silica regulation.

The peer review process is a key tool in enforcing regulatory discipline and sound agency practice. As most the federal agencies are engaged in a spike of regulatory activity at this time, an oversight hearing on the silica regulation peer review process might have utility in ensuring that other federal agencies implement robust and effective peer review on a host of regulatory actions in the planning phase.

ICPI is one of many stakeholder groups that will absorb heavy impact from a silica regulation. Should the Committee wish to take up this issue for possible oversight activity, ICPI could be helpful in recommending industry groups in Washington DC who are subject matter experts and have even greater, more direct exposure to a silica regulation that lacks sufficient input from industry.

Mr. Chairman, thank you for your kind attention. In case your staff have any questions and would appreciate pursuing this matter further, please direct them to contact ICPI's Government Relations Counsel: Randall G. Pence, Esq., Capitol Hill Advocates, Inc., at (703) 534-9513.

Sincerely,



Charles A. McGrath, CAE  
Executive Director



1700 Diagonal Road, Suite 650  
Alexandria, VA 22314  
Ph: 703-683-5213  
Fax 703-683-4074  
Web: [www.bottledwater.org](http://www.bottledwater.org)

January 13, 2011

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

Dear Chairman Issa,

On behalf of the International Bottled Water Association (IBWA), I want to thank you for the opportunity to identify proposed or existing regulations that may negatively impact job growth and economic competitiveness within the United States bottled water industry. IBWA commends you for your efforts on this very important issue, and we look forward to working with you on this and other matters affecting the bottled water industry.

IBWA is the national trade association representing all segments of the bottled water industry, including spring, artesian, mineral, sparkling, well, groundwater and purified bottled waters. Founded in 1958, IBWA's approximately 750 member companies include bottled water producers, suppliers and distributors in the United States and throughout the world.

#### **Bottled Water Industry Jobs and Economic Impact**

In 2009, the bottled water industry was responsible for as much as \$130 billion in total economic activity and generated over \$12.7 billion in property, income and sales taxes in the United States (John Dunham and Associates, New York, 2009). Companies that produce, distribute and sell bottled water products in the United States employ as many as 163,000 people and generate an additional 530,000 jobs in supplier and ancillary industries. These include jobs in companies supplying goods and services to bottled water manufacturers, distributors and retailers, as well as those that depend on sales to workers in the bottled water industry. Not only does the manufacture of bottled water create good jobs in the United States, but the industry also contributes to the economy as a whole.

Most IBWA members are small businesses. In fact, 60% of our members have less than \$2 million in annual gross sales, and 90% of our members have less than \$10 million in annual gross sales. Many of these companies are locally-based family entrepreneurs with deep roots and strong ties within their communities. The impacts of costly and unnecessary regulatory burdens affect these small businesses most severely.

While not an exhaustive list, provided below are several proposed or existing regulations that may negatively impact IBWA member companies in terms of job growth and economic competitiveness.

### **Bottled Water Safety and Regulation**

Bottled water is a safe, healthy, and convenient packaged food product that is comprehensively and stringently regulated by the United States Food and Drug Administration (FDA) and state governments. IBWA is committed to working with federal and state officials to establish and implement stringent standards that help ensure the production of safe, high-quality bottled water products. IBWA members must also comply with the IBWA Code of Practice which, in some cases, is even more stringent than federal and state regulations for bottled water and tap water. As a condition of membership, IBWA bottlers must submit to an annual plant inspection by an independent third-party organization to determine compliance with all FDA regulations and the IBWA Code of Practice.

Some consumer activists and environmental groups have previously lobbied for legislative and regulatory mandates on bottled water products that would do nothing to enhance their safety. At the federal level, bottled water is regulated as a packaged food product under the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. §§ 301 et seq., and several parts of Title 21 of the Code of Federal Regulations (CFR). There are four pillars that support the federal bottled water regulatory framework: general food regulations, specific bottled water Good Manufacturing Practices regulations, bottled water Standards of Identity regulations, and bottled water Standards of Quality regulations.

IBWA supported the Food Safety and Modernization Act (HR 2751), which was recently signed into law by President Obama. This new statute will give FDA stronger enforcement powers over our nation's food supply and tighten controls over food imports. The new law also mandates additional responsibilities for food manufacturers and food producers, including hazard analysis and identification of preventive controls, supply chain management, and records maintenance and access.

IBWA has enjoyed a strong and productive working relationship for many years with FDA and its Center for Food Safety and Applied Nutrition (CFSAN), which oversees federal bottled water regulations. Moreover, the bottled water industry has an excellent track record of complying with those regulations. However, we are concerned that bottled water critics may try to push an unnecessary and over-zealous agenda upon FDA as the Agency develops regulations to implement the new food safety law. We hope that your Committee will monitor FDA regulatory activity on this matter to ensure reasonable regulations are implemented.

### **Unreasonable Testing Requirements**

We are also concerned that some consumer activists and environmental groups are pushing state and federal regulators to adopt substance testing requirements that are not achievable and/or scientifically sound. In their flawed view, any detectable level of a substance poses a health risk,