

Testimony for US Congressional Hearing

Committee on Oversight and Government Relations, Subcommittee on Government Operations

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Chairman Mica, ranking member Cummings, members of the Committee on Oversight and Government Relations; thank you for the opportunity to testify at today's field hearing on the impact of federal regulations on small businesses and job creation in Michigan.

My name is Michael Lenahan and I am testifying on behalf of the American Foundry Society. The American Foundry Society is the predominant trade association of the metal casting industry in North America. Foundries manufacture engineered parts, called castings, which are made by pouring molten metal into mold. Most of the time, these molds are made out of sand. Examples of metal castings that you may be familiar with are engine blocks, man-hole covers, artificial knee joints, and the Liberty Bell.

The US foundry industry employs approximately a quarter of a million people, but 80% of our foundries employ 100 people or less. We are comprised primarily of small businesses. Many of the companies that supply foundries are also small businesses. I run one of those small businesses.

My testimony today really boils down to one thing and one thing only: anything that takes time away from the efficiency of managing a small business can be crippling. Small businesses simply do not have the resources to dedicate to tasks that are non-productive.

In order for any business to thrive, there must be time for the management of that business to do three things:

1. Focus on enhancing what they do well.
2. Improve productivity.
3. Expand offerings and grow the business.

When management has time to look ahead and focus on improvement, they typically increase productivity and expand. This often results in the hiring of more employees. When management does not have time to focus on these things, they mark time and wait for the next crisis. For many businesses, the next crisis is addressing the latest regulation. Regulations, and more specifically, regulatory changes or new regulations, consume massive quantities of managerial time and resources.

From my viewpoint, there are five major problems that I see with federal regulations.

1. There are far too many new regulations.
2. Many new regulations or modifications to regulations appear to be created or modified with minimal or no thought as to how they will impact a business.
3. Many regulations are improperly conceived or misapplied and provide little to no measurable benefit.

4. New regulations have a cost, a cost that is often ignored or dramatically understated by those writing new regulations.
5. New regulations create uncertainty which limits a business in their ability to plan.

I have three brief examples that I would like to reference as part of my testimony today as to how regulations impact small businesses and job creation.

The first example highlights OSHA's new Crystalline Silica Standard. I am submitting a copy of the foundry industry testimony given at the March 28, 2014 hearing with OSHA and the US Department of Labor. In the interest of time, I would like to briefly explain in layman's terms the basics of this new rule. This new rule will reduce the permissible exposure limit (PEL) for silica from 100 micrograms per cubic meter to 50 micrograms per cubic meter. What does 50 micrograms per cubic meter look like? Take a packet of artificial sweetener and distribute that across a football field with a height of 13 feet.

As mentioned, foundries utilize sand (made primarily of silica) to make the molds which define the shape of the castings they produce. A foundry of this football field area size could be utilizing upwards of 10,000 tons of sand in annual production. As a reference point, it would take 400 semi dump trucks lined up bumper to bumper for four miles to contain 10,000 tons of sand.

OSHA's new silica rule would require all foundries not meeting the 50 microgram standard to put in engineered controls, basically massive high quality filtration equipment, within the facility to get the foundry into compliance. On the surface, this may seem acceptable until you dig a little deeper. First, the vast majority of experts on the subject believe foundries will fail to meet the standard even if they use the best technology money can buy. Second, to provide some perspective, the level of cleanliness required to meet the new standard is more stringent than what the National Aviation and Space Administration, NASA, requires for silica in one of their laboratory clean rooms. Lastly, the new rule does not allow employers to provide workers with personal protective devices until after it proves that the installed engineering controls cannot meet the standard. In other words, this regulation says; "spend the money on extremely expensive engineering controls whether they work or not, and only after you prove it does not work can you distribute the personal protective equipment to your employees."

The logic behind this approach is flawed at the most basic of levels. How many successful strategic initiatives involve choosing the most expensive and most likely to fail option first? This would be like forcing a public school district to purchase jet airplanes to transport school children because statistics show it is a safer and faster mode of transportation. Practical application of this idea would be more costly and not as safe. Eventually they would go back to buses, but only after they broke the bank on buying airplanes.

This may sound like a ridiculous comparison. However, you will see in the executive summary of the attached testimony that OSHA's new silica regulation is not the most effective way to protect workers. You will also see that OSHA has omitted some costs and grossly underestimated the overall cost to implement this new rule (\$44 million per year versus \$2.2 billion).

A second example of federal regulations impacting small business and job creation is the New Source Performance Standard Sub-Part UUU. This standard was meant to be applied to the mining industry and specifically to operations that dry sand. This standard was not meant to be applied to foundries. How do we know this? We know this because our industry spoke directly with the author that wrote the rule at EPA. We only spoke to this individual after the rule was being misapplied by regulators at some of our foundries.

This is a case of the right hand not working with the left hand despite overwhelming evidence from the source that enforcing this regulation was a total mistake. Companies in our industry, including mine spent thousands of dollars to hire attorneys and have special testing done. We also spent hundreds of hours meeting to discuss our strategy if our businesses were targeted or fined by those enforcing this rule. Perhaps the greatest irony is that this rule if enforced would have provided no environmental benefit. The resources spent to educate ourselves, track down the truth, and prepare for a legal battle took valuable resources away from other operational priorities.

Finally, federal regulations do not only hurt the private sector. Sometimes they take resources away from doing something positive. For the last five years, the foundry industry has been waiting for the EPA to finalize a risk assessment that was completed by the US Department of Agriculture showing that foundry sands could be recycled and utilized safely in top soils. This independent research, funded by taxpayers, shows that these materials pose no greater threat to the environment than do native soils. These findings are significant relative to our industry's ability to recycle our materials, thereby reducing costs, reducing waste, and creating a potentially new revenue source. It is frustrating to think that resources allocated to enforcing Subpart UUU could have been directed to finalize this risk assessment. This delay has slowed the conservation of natural resources, diverted otherwise recyclable materials to landfills, and stunted opportunities for job creation.

It is clear that rules and regulations are important to the well-being of our society. I am not advocating a society where rules and regulations do not have their place. However, we need to find a way to reduce the regulatory burden on everyone by only promulgating rules that make sense. Regulations come at a cost to small business and limit our ability to be creative and grow. If we want small businesses to thrive in this country, regulatory reform must be part of the equation.

Thank you.