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ASSESSING THE CUMULATIVE IMPACT OF REGULATION ON U.S. MANUFACTURERS

HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATORY AFFAIRS, STIMULUS OVERSIGHT AND GOVERNMENT SPENDING

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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ASSESSING THE CUMULATIVE IMPACT OF REGULATION ON U.S. MANUFACTURERS

WEDNESDAY, MARCH 9, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATORY AFFAIRS, STIMULUS OVERSIGHT AND GOVERNMENT SPENDING,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:35 a.m., in room 2154, Rayburn House Office Building, Hon. Jim Jordan (chairman of the subcommittee) presiding.

Present: Representatives Jordan, Buerkle, Labrador, Guinta, Kelly, Issa (ex officio), Kucinich, and Cummings (ex officio).

Staff present: Molly Boyl, parliamentarian; Joseph A. Brazauskas, counsel; Kate Dunbar, staff assistant; Adam P. Fromm, director of Member services and committee operations; Ryan M. Hambleton, professional staff member; Frederick Hill, director of communications and senior policy advisor; Christopher Hixon, deputy chief counsel, oversight; Justin LoFranco, press assistant; Mark D. Marin, senior professional staff member; Kristina M. Moore, senior counsel; Krista Boyd and Brian Quinn, minority counsels; Cecelia Thomas, minority counsel/deputy clerk; and Alex Wolf, minority professional staff member.

Mr. JORDAN. The committee will come to order.

We exist to secure two fundamental principles: First, Americans have a right to know that the money Washington takes from them is well-spent; and, second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights.

Our responsibility is to hold government accountable to taxpayers because taxpayers have a right to know what they get from their government. We will work tirelessly in this partnership with citizen watchdogs to deliver the facts to the American people, to bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Government Reform committee.

I want to thank all our witnesses for being here with us this day. I will do a quick opening statement, and then my friend and colleague and ranking member, Mr. Kucinich, will have an opening statement, and then we will get right to your testimony.

We do have the Australian Prime Minister on the floor at 11, so we want to get through as much as we can prior to adjourning for that.

Thank you all for coming today.

Last month, the Oversight and Government Reform Committee held a hearing entitled, "Regulatory Impediments to Job Creation." This hearing was the result of a committee effort to learn about which regulations were standing in the way of job creation. We heard from many employers and industries from across the Nation.

As chairman of this subcommittee, I am especially looking forward to continue this work, examining the effects of regulations on American job creators. This subcommittee has jurisdiction over the regulatory process, and we recognize that job creators do not live in a world where they are only subject to one regulation issued by one agency. In the real world, outside the Beltway, job creators are subject to numerous regulations and compliance obligations enforced by a virtual alphabet soup of Federal agencies. As we attempt to get our economy going again and get people back to work, it is crucial that we all start to think about the numerous burdens and mandates that we are putting on the private sector.

On January 21, 2011, President Obama issued Executive Order 13563 directing agencies to, "take into account the cost of cumulative regulations." I applaud this commonsense plan. Today's hearing will examine whether the government has begun to follow this directive and what Congress can do to help implement it.

I believe we should start by first looking at the bedrock of our economy, the manufacturing sector. U.S. manufacturing is the industry hit the hardest by regulatory costs. With per-firm costs at approximately $688,000, half-a-million dollars greater than the national average cost for other industries. Moreover, small manufacturers bear a proportionately larger regulatory burden, with an estimated cost of $26,000 per employee—more than double the burden that is faced by larger manufacturers.

While the Oversight Committee was collecting information from job creators about the regulatory burdens they faced, it quickly became obvious which agency was the number-one concern to them: the Environmental Protection Agency. This hearing will provide Congress with an opportunity to understand how all the regulations in the pipeline at EPA, in addition to the ones already in existence, impact a critically important part of our economy.

I would like to take a moment to say how disappointed I am that the EPA chose not to send a witness to this hearing. The reason given was that their witness would not be scheduled to testify alone on the first panel.

I think this subcommittee has been very fair in offering to seat their witness alone on a second panel that would be guaranteed to start at 10:30 sharp this morning. However, that offer was rejected. It is too bad that the EPA not only refuses to sit at a witness table with some of the very people that they are regulating, but also refused to wait and listen to the rest of the witnesses' testimony.

Also, in contract to the EPA, our other witnesses here today have agreed to take time out of their schedules and provide their testimony to us without a list of demands. EPA's behavior is the type that gives people throughout the country the impression that their government is aloof and not listening to them.

Despite EPA's lack of participation, I still think we can have a productive and informative hearing. The panel we have here today can speak very well to the cumulative impact of government regu-

lations. This information, straight from the people affected, is invaluable.

In fact, the committee even has a Web site, americanjobcreators.com, where any American can log in and tell us their story. We are listening, and we want to hear what you have to say.

With that, I would yield 5 minutes to the ranking member, Mr. Kucinich.

[The prepared statement of Hon. Jim Jordan follows:]

Thank you all for coming today. Last month, the Oversight and Government Reform Committee held a hearing entitled "Regulatory Impediments to Job Creation." This hearing was the result of a Committee effort to learn about which regulations were standing in the way of job creation. We heard from many employers and industries from across the nation. As Chairman of the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending, I am especially looking forward to continuing this work examining the effects of regulations on American job creators.

As Chairman of the subcommittee with jurisdiction over the regulatory process, I recognize that job creators do not live in a world where they are only subject to one regulation issued by one agency. In the real world outside the Beltway, job creators are subject to numerous regulations and compliance obligations enforced by a virtual alphabet soup of federal agencies.

As we attempt to get our economy going again and get people back to work, it is crucial that we all start to think about the numerous burdens and mandates that we are putting on the private sector. On January 21, 2011, President Obama issued Executive Order 13563 directing agencies to "take into account…the cost of cumulative regulations." I applaud this common-sense plan. Today's hearing will examine whether the government has begun to follow this directive and what Congress can do to help implement it.

I believe we should start by first looking at the bedrock of our economy—manufacturing. U.S. manufacturing is the industry hit the hardest by regulatory costs, with per firm costs at $688,944 – half a million dollars greater than the national average cost for all industries. Moreover, small manufacturers bear a proportionally larger regulatory burden with an estimated cost of $26,316 per employee – more than double the burden that is faced by larger manufacturers.

While the Oversight Committee was collecting information from job-creators about the regulatory burdens they faced, it quickly became obvious which agency was the number one concern to them: the Environmental Protection Agency. This hearing will provide Congress with an opportunity to understand how all the regulations in the pipeline at EPA, in addition to the ones already in existence, impact a critically important part of the economy.

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Mr. KUCINICH. I thank you very much, Mr. Chairman.

And the chair and I have had discussions about the witnesses, and I am hopeful that in the future we will be able to work out our differences with a commonsense approach.

I want to state for the record, there is a longstanding precedent in Congress of putting administration witnesses first on their own panel. And there have been exceptions, but the committee has allowed witnesses from Republican and Democratic administrations to testify first on their own panel.

Now, I certainly respect the prerogative of this chair, and I respect the prerogative of the chair of the full committee. And we don't need to be at loggerheads about things like the sequence of witnesses. We have things that are much more serious to get into here. And I have every confidence, given our relationship, Mr. Chairman, that we will work it out down the line.

I want to thank you for holding the hearing. I fully——

Mr. JORDAN. Would the gentleman yield?

Mr. KUCINICH. Of course I would.

Mr. JORDAN. Just for 10 seconds. The gentleman is right; the precedence has been for the administration to have the first panel witness. We thought, in light of the economic situation, in light of the concern we all have, regardless of party, about the regulatory burden, that it made sense to hear from the people who faced these regulations and then have the administration have their complete panel to themselves, talk, and then follow back up with the same people.

We thought that would be a better way for Members of Congress and the public to get information, and that is why we chose the approach we did. As I indicated, unfortunately, the EPA decided not to send a witness.

Mr. KUCINICH. Well, again, Mr. Chairman, you know, I think that if you and I had had an opportunity prior to this moment right here to work this out, I think we probably could have found a way to get the EPA participating.

I certainly think that it is a good idea for them to hear witnesses testify, particularly those who are subject to the EPA regulations. It makes sense. It can actually help you be a better regulator, to hear what people have to say.

I fully support having a discussion about the impact of regulations on industry, and I want to know if there are regulations that are unnecessarily burdensome on this country's manufacturers.

I also know that regulations are creating jobs and the regulations are saving lives. And, in order to have a truly productive conversation about regulations that yield real results, we cannot focus solely on cost. The cost must be weighed against benefits.

This year, the Office of Management and Budget estimated that, from 2000 to 2010, Federal regulations resulted in a financial benefit of $136 billion to $651 billion, with a cost of $44 billion to $62 billion. That is a 2:1 benefit-to-cost ratio using OMB's lowest estimations and greater than a 10:1 benefit-to-cost ratio based on OMB's highest estimations.

EPA's air pollution rules alone account for 60 to 85 percent of these benefits. That means that in a 10-year period from 2000 to 2010, during both a Democrat and Republican White House, EPA

regulations have resulted in anywhere from $81.7 billion in benefits to a remarkable $550.4 billion in benefits.

These kinds of regulations also have a positive effect on job creation. A 2008 study found that environment protection as an industry generated $300 billion in sales in 2003 and provided 5 million jobs.

Many of the regulations identified as burdensome by today's witnesses fall under the umbrella of the Clean Air Act. I think that we are going to hear a lot today about the cost of the Clean Air Act, so I want to take a minute to talk about its benefits.

EPA's most recent estimate of the total financial benefit of the Clean Air Act is $1.3 trillion. This figure dwarfs the estimated cost at $53 billion. That is a ratio of about 26:1. By 2020, the financial benefit of the Clean Air Act is expected to skyrocket to an astounding $2 trillion, while the proportion of costs increases marginally to $65 billion, a ratio of 32:1.

In this same report, the EPA went on to say, "It is extremely unlikely the cost of the 1990 Clean Air Act amendments programs would exceed their benefits, under any reasonable combination of alternative assumptions of methods, even if one were to adopt the extreme assumption that air pollution no effect on premature mortality or that avoiding such effects has no value."

In 2003 alone, EPA estimates that the Clean Air Act standards on only particulate matter and ozone pollution have prevented 160,000 premature deaths, 130,000 cases of acute myocardial infarction, 1.7 million cases of asthma exacerbation, 86,000 hospital admissions, 86,000 emergency-room visits, 3.2 million lost schooldays, and 13 million lost workdays.

We don't want to emulate what is happening in India and China. We don't want to turn the clock back to the 19th century, when the absence of regulation led to pollution of our air and water, exploitation of our natural resources, and destruction of our environment.

So, Mr. Chairman, as we sit here today and talk about the impact of regulations, let's be careful not to forget that premature deaths, heart attack, asthma, lost schooldays, and lost workdays are also results that we want to avoid.

I thank the chair.

Mr. JORDAN. I thank the gentleman.

Our ranking member of the full committee, the distinguished gentleman from Maryland, would like to make an opening statement.

Mr. CUMMINGS. I will be very brief. Thank you very much Mr, Chairman, and thank you for your courtesy.

Chairman Jordan, Ranking Member Kucinich, this is a very important hearing.

At last month's full committee hearing on the impact of regulations on job creation, I said in my opening remarks that effective regulatory review should include several elements: an examination of the costs and benefits, conclusions based on solid data, and input from a variety of sources.

I support a comprehensive review of the impact of regulations, but I stand firm in my belief that any assessment of cumulative impact must take into account the benefits of those regulations and not just the costs. We are better than that.

I am also mindful that there are costs associated with the lack of regulation, as well. The 2008 financial collapse and subsequent loss of 8 million jobs taught us that much. As a matter of fact, just held a hearing in my district—this committee held a hearing in my district yesterday, where we have seen a loss in Baltimore city of $1½ billion with regard to real estate and foreclosures because of this financial collapse, lack of regulation.

At a time when creating jobs is our top priority here in Congress, I believe we must consider that regulation has the potential to actually create jobs, as Mr. Kucinich just said. A February 2011 report issued by Ceres and the Political Economy Research Institute concluded that EPA's Clean Air Transport and the boiler MACT rules will strengthen our economy and grow jobs. Specifically, the report estimates that, over the next 5 years, 1½ million jobs will be both directly and indirectly created by these two rules. This includes jobs in steel manufacturing, catalyst system manufacturing, and control system manufacturing. This is in addition to the substantial public health benefits from cleaner air. EPA estimates that the benefits of the Clean Air Act are projected to exceed the costs by a factor of more than 30 to 1 by 2020.

I am reminded, when I talk about this, of when I worked as a high school student at Bethlehem Steel. And when you would go on the yard of Bethlehem Steel, if you blew your nose, what came out was red or black after being there for an hour. Thank God some OSHA rules have come about where you now have to wear masks. Because people want to go to work, they want jobs, but they want to come home safely to their families and not be shipped to them in a coffin.

In November 2010, the World Resources Institute concluded that EPA's greenhouse gas rules will drive innovation and lead to energy savings for manufacturers. The institute found that for refineries, glass manufacturers, and others, investments in efficiency technologies would offset most, if not all, current environmental costs combined.

In December 2010, several business organizations representing 60,000 firms across the country wrote to President Obama and Members of Congress, urging us to support the EPA and the Clean Air Act.

In addition, in a December Wall Street Journal letter to the editor titled, "We're OK with the EPA's New Air Quality Regulations," eight leading utility companies explained that EPA air quality regulations carry economic benefits, including job creation.

Finally, Mr. Chairman, I continue to hope that we will conduct responsible evaluations of regulations consistent with the President's recent Executive order. However, any discussion on the cumulative effect of regulation must include the positive impact regulation has on our economy and on our families and on our constituents and the benefit it holds for individuals and businesses alike.

I thank all of our panelists for being here today, and I look forward to hearing from you on how we can improve regulations to make America safer.

And I wanted to be very clear, Mr. Chairman, on this side of aisle, we are concerned about a balanced approach to this. We realize that there are regulations that are probably outdated. But we

must be very, very careful, because regulations were, after all, put forth to make sure that the American people's health, safety, and welfare are protected. And that includes every single person in these great United States of America.

Again, Mr. Chairman, I thank you for your courtesy, and I yield back.

[The prepared statement of Hon. Elijah E. Cummings follows:]

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Opening Statement
Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform

Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending
Hearing on "Assessing the Cumulative Impact of Regulation on U.S. Manufacturers"

March 9, 2011

Thank you, Chairman Jordan and Ranking Member Kucinich.

At last month's full Committee hearing on the impact of regulations on job creation, I said in my opening remarks that effective regulatory review should include several elements: an examination of the costs and benefits, conclusions based on solid data, and input from a variety of sources.

I support a comprehensive review of the impact of regulations, but I stand firm in my belief that any assessment of cumulative impact must take into account the benefits of those regulations – and not just the costs. I am also mindful that there are costs associated with the lack of regulation as well – the 2008 financial collapse and subsequent loss of 8 million jobs taught us that much.

At a time when creating jobs is our top priority here in Congress, I believe we must consider that regulation has the potential to actually create jobs and grow our economy.

A February 2011 report issued by Ceres and the Political Economy Research Institute concluded that EPA's Clean Air Transport and the boiler MACT rules will strengthen our economy and grow jobs. Specifically, the report estimates that over the next 5 years, 1.5 million jobs will be both directly and indirectly created by these two rules. This includes jobs in steel manufacturing, catalyst system manufacturing, and control system manufacturing. This is in addition to the substantial public health benefits from cleaner air. EPA estimates that the benefits of the Clean Air Act are projected to exceed the costs by a factor of more than 30 to 1 by 2020.

In November 2010, the World Resources Institute concluded that EPA's greenhouse gas rules will drive innovation and lead to energy savings for manufacturers. The Institute found that for refineries, glass manufacturers, and others, investments in efficiency technologies would offset most if not all current environmental costs combined.

In December 2010, several business organizations, representing 60,000 firms across the country, wrote to President Obama and members of Congress, urging us to support the EPA and the Clean Air Act. In addition, in a December Wall Street Journal letter to the editor titled "We're OK With the EPA's New Air-Quality Regulations," eight leading utility companies explained that EPA air quality regulations carry economic benefits, including job creation.

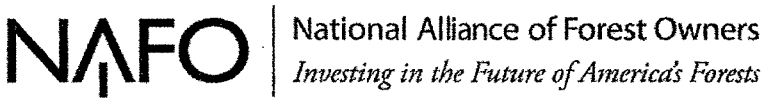
I continue to hope that we will conduct a responsible evaluation of regulations, consistent with the President's recent Executive Order. However, any discussion on the cumulative effect on regulation must include the positive impact regulation has on our economy, and the benefits it holds for individuals and business alike.

I thank all of our panelists for being here today, and I look forward to hearing from you on how we can improve regulation to make Americans safer, healthier, and more competitive on the global stage.

Mr. JORDAN. I thank the gentleman.

Members have 7 days to submit opening statements and extraneous material for the record.

[The information referred to follows:]



Statement of David P. Tenny
President and CEO, National Alliance of Forest Owners
House Committee on Oversight and Government Reform, Subcommittee on Regulatory Affairs
"Assessing the Cumulative Impact of Regulation on U.S. Manufacturers."
March 9, 2011

I. Introduction

The National Alliance of Forest Owners (NAFO) is pleased to submit a statement to the House Committee on Oversight and Government Reform, Subcommittee on Regulatory Affairs' hearing on, "Assessing the Cumulative Impact of Regulation on U.S. Manufacturers."

NAFO is an organization of private forest owners committed to promoting Federal policies that protect the economic and environmental values of privately-owned forests at the national level. NAFO membership encompasses more than 79 million acres of private forestland in 47 states. NAFO was incorporated in March 2008 and has been working aggressively since to sustain the ecological, economic, and social values of forests and to assure an abundance of healthy and productive forest resources for present and future generations.

NAFO's members are the nation's leaders in sustainable forest stewardship and recognize the fundamental role they play in supplying the nation with forest products, clean air and water, open space, wildlife habitat, recreation, and more.

II. Private forests provide jobs for millions of Americans.

Private forests in the United States support over 2.5 million jobs, $87 billion in payroll, and $115 billion in contribution to the gross domestic product. Forests and the manufacturing they support are key employers in many states. For instance, they support 123,000 jobs in Ohio, 67,000 jobs in New York, 96,000 in Tennessee, and 30,000 in Idaho.

122 C Street NW, Suite 630, Washington, DC 20001 • (202) 747-0759 • www.nafoalliance.org

III. Private forests and the jobs they provide are most effectively conserved by ensuring that forestry remains an economically viable land use.

Private working forests and the jobs they support depend upon reliable markets and a reasonable and predictable regulatory environment for continued viability. The U.S. has experienced sustained growth in its forest resources in concert with an ever-increasing demand for renewable forest products. The total forest land base has remained constant for over 100 years, and the total standing inventory of trees on our forests has increased fifty percent over the past 50 years. This is attributable at its core to the fact that viable markets for forest products keep forestland economic compared to other uses, spurring investment in forest management and limiting forest conversion to other land uses that realize a greater economic return.[1] When existing markets for their products are strong, or when new markets like energy emerge, forest owners are able to invest in tree planting and forest health treatments which help maintain the private forest land base, keep private forests economically competitive with other land uses, and maintain family-waged jobs in the forestry sector.

In addition to markets, economic viability depends on a regulatory environment that ensures sustainability within a cost structure that encourages forests as a land use. In the U.S., private forestry operations are governed by a carefully tailored set of laws, regulations, and non-regulatory policies at the federal, state and local level in addition to voluntary, third-party certifications. The resulting framework has developed over many years and is now mature and adapted to resource conditions and needs of individual jurisdictions.[2] The effectiveness of this framework has made the United States a world leader in sustainable forest practices.

The Federal government should take actions to encourage viable markets for forest products and maintain a regulatory framework that encourages forestry as a viable land use that will continue to provide good paying jobs in rural communities and provide multiple public benefits for all Americans.

IV. EPA's regulation of biomass energy greenhouse gas emissions under the Clean Air Act could stifle renewable energy production, push U.S. forest product manufacturing overseas, and force the conversion of private forests to non-forest uses.

On January 2, 2011, the EPA began regulating greenhouse gas (GHG) emissions under the Clean Air Act through the "Tailoring Rule." The final Tailoring Rule, without appropriate notice and opportunity to comment, made a sudden change in policy by treating carbon emissions from biomass the same as those of fossil fuels and applying identical permitting requirements to both. The draft rule was consistent with government-wide policy, international conventions and well-established science recognizing that forest biomass recycles carbon from the atmosphere through tree growth and does not increase overall carbon in the atmosphere.

On January 12, 2011, EPA announced that it will publish a final rule by July 1, 2011 to defer the regulation of biomass energy GHG emissions from the Clean Air Act for three years while it further studies the science and public policy implications of regulating biomass energy carbon emissions. EPA's action is a critical step toward recognizing the full carbon benefits of biomass as a leading source of renewable energy. The three-year moratorium will allow the EPA and the U.S. Department of Agriculture (USDA) to work with Congress, biomass producers and users, scientists and other interested parties to develop a science-based policy supporting a vibrant biomass energy sector for the long term without penalizing biomass energy production in the interim.

Should the EPA revert back to regulating biomass energy GHG emissions the same as fossil fuels, the U.S. will see a reduction in renewable energy from biomass, , a loss of forest product manufacturing capacity and jobs in the U.S. and further pressure to convert private forests to alternative land uses.[3] Economic analysis showed that the market uncertainty caused by the Tailoring Rule could cause the loss of 12,000 to 26,000 renewable energy jobs, decrease capital investment in renewable energy by $18

billion, eliminate 5,384 fewer megawatts of renewable electricity generation, and remove 53.4 million tons of wood biomass from the marketplace.[4]

V. Silviculture's long standing treatment under the Clean Water Act as a nonpoint source helps protect water quality while ensuring that forestry is an economically viable land use. Court decisions and regulatory action threaten private forestry and the raw materials for U.S. forest product manufacturers.

Since 1976, EPA Clean Water Act (CWA) regulations governing forestry (commonly known as the "silviculture rule") have defined most forest management activities, including pest control and forest roads, as nonpoint sources of water pollution. Under the CWA, only point sources must obtain permits (commonly known as NPDES permits) for discharges of pollutants into waters of the United States. Nonpoint sources, such as the stormwater runoff from land uses over large areas, are subject to state-developed best management practices (BMPs). Studies indicate that implementation of BMPs in forest management averages nearly 90% nationwide and has been a proven and effective means of protecting and improving water quality. EPA is now considering two actions that would eliminate the long-standing rules governing forestry, require point source permits for forest activities for the first time, and erode the economic viability of private, working forests and the jobs they support.

A. Pesticide application is an important silvicultural tool that is already effectively regulated under federal law.

Pursuant to a court order, EPA issued in June of 2010 a draft general NPDES permit for application of pesticides over, into, or "near" waters of the United States. States are now developing state versions. EPA suggests that the silviculture rule no longer applies to pest control, even though the court order did not address the validity or ongoing application of the silviculture rule . The new permit duplicates protections already adopted by EPA under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA and adds additional paperwork and reporting requirements without providing

any additional environmental benefits. EPA registers pesticides and herbicides by approving application criteria in FIFRA approved labels. Because pesticides undergo lengthy testing under FIFRA, including tests to ensure water quality and aquatic species preservation, and because they are useful products, EPA had considered NPDES permits to be unnecessary and duplicative prior to the court's decision.

B. Forest roads provide access to forests for timber production, replanting, recreation, wildlife management, and more. They are effectively regulated through best management practices (BMPS) as a nonpoint source under the CWA.

Forest roads are one of the forest management activities specifically described by EPA in its 1976 regulations as a "nonpoint source" that do not require NPDES permits under the CWA. Water quality is effectively protected during forest management through the use of BMPs[5]. Several courts have affirmed EPA's regulation that forest roads are nonpoint sources that do not require NPDES permits. *Sierra Club v. Martin*, 141 F.3d 803 (8th Cir. 1998); *Newton County Wildlife Association v. Rogers*, 71 F. Supp 2d. 1268, 1303 (N.D. Ga.1999).

The Northwest Environmental Defense Center (NEDC) sued the Oregon State Forester, the Oregon Board of Forestry, and four timber purchasers alleging that roads in the Tillamook State Forest are "point sources" requiring NPDES permits. *NEDC v. Brown*. After the U.S. District Court for the District of Oregon upheld the regulation, the U.S. Court of Appeals for the Ninth Circuit determined for the first time in the nearly 35 year history of the silviculture rules that forest roads and their stormwater controls are point sources subject to the NPDES permit requirement. *NEDC v. Brown*, 617 F.3d 1176 (9th Cir. 2010). The court ruled that the ditches and culverts used by the road system to manage stormwater runoff are within the definition of point source in the CWA, and, therefore, EPA lacked authority to designate them a nonpoint source in 1976.

The Ninth Circuit further ruled that EPA included logging and associated roads within its definition of "industrial activities" subject to Phase I of the stormwater NPDES permit program which require NPDES permits. The court refused to consider EPA's explanation of its 1990 Phase I regulations and ruled that logging and associated roads must be considered an industrial activity.

The defendants and the intervener industry organizations have asked the Ninth Circuit to reconsider its decision. While the EPA is not a party to this case, the agency has up to this point supported the defendants in district court and on the appeal. However, the U.S. Department of Justice (DOJ) recently filed a brief contravening its earlier positions and arguing for the first time that the silviculture rule is "ambiguous" whether collecting stormwater runoff from forest roads is a "nonpoint source," notwithstanding the fact that this has been the issue in every lawsuit against forest roads filed over the past 20 years. Notwithstanding this historical re-interpretation by the DOJ, EPA should take appropriate steps to support its regulations, such as formally disagreeing with the Ninth Circuit and re-affirming its long-standing interpretation, ably set out in the 2003 statement by the EPA General Counsel. In addition, there is no need for the EPA to make permit coverage available throughout the country while rehearing is pending since the decision is not in effect and, if affirmed, its scope is limited to the specific parties, which do not include EPA.

VI. Congress should act to ensure that the EPA does not inappropriately regulate biomass energy production and forestry operations under the Clean Air Act and the Clean Water Act.

Congress should take three specific actions to ensure the appropriate treatment of biomass energy and forestry operations under EPA's authorizing statutes.

First, Congress should ensure that the EPA follows through on its commitment to defer the regulation of biomass energy from the Tailoring Rule for three years pending further review of the science and public policy implications of regulating biomass energy the same as fossil fuels. Congress should also ensure that the EPA's review of

the biomass energy carbon cycle is free from policy bias in any baseline assumptions established to frame the review.

Second, Congress should enact H.R. 842, the Reducing Regulatory Burdens Act, to restore the proven system of regulating pesticide applications under FIFRAand eliminate duplicative and unnecessary additional requirements.

Third, Congress should monitor the Ninth Circuit's decision in *NEDC v. Brown* and, if necessary, enact legislation to affirm the EPA's long-standing policy that stormwater systems for forest roads are nonpoint sources.

These three specific actions will maintain ongoing benefits from well-established policies with proven environmental benefits, support the competitiveness of the U.S. forest products industry, maintain the good paying jobs this industry provides to Americans across the country, and help maintain forests as a viable ongoing land use.

VII. Conclusion

Private forests in the U.S. support millions of family-waged jobs, provide forest products used by all Americans every day, create opportunities for recreation and the enjoyment of open space. They also provide clean air and water, remove carbon from the atmosphere, supply wildlife habitat, and a variety of other environmental benefits. Forest acreage and overall forest carbon stocks are increasing because forests are an economically viable land use. Conserving these forests as a viable long-term land use by avoiding costly and unnecessary regulations that defeat overall water quality objectives should be a cornerstone environmental policy of the EPA.

Unfortunately, recent actions threaten to frustrate these objectives, create uncertainty in the marketplace that stifle investment in forest management and renewable energy infrastructure, and threaten critical existing and prospective jobs in rural America at a time when economic recovery in these sectors of the economy is vitally needed. We urge the Committee to work with the Administration to align its

regulatory actions with longstanding policy objectives and properly position our nation's private forests as part of our solution rather than casting them as part of a problem that must be regulated. We stand ready with our full resources to help.

Respectfully Submitted,

David P. Tenny
President and CEO
National Alliance of Forest Owners

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[1] *Environmental Effects of Agricultural Land-Use Change: The Role of Economics and Policy*, Ruben Lubowski, Shawn Bucholtz, Roger Claasen, Michael J. Roberts, Joseph C. Cooper, Anna Gueorguieva, and Robert Johansson, USDA Economic Research Service. Economic Research Service Report Number 25 (August 2006).
[2] More Information is available at http://nafoalliance.org/environmental-regulation-of-private-forests/.
[3] *Unintended Consequences of the EPA Tailoring Rule: Treatment of Biomass Emissions the Same as Fossil Fuel Emissions*. Dr. Bruce Lippke and Dr. Elaine Oneil. September 2010.
[4] *Economic Impact Analysis of the EPA Greenhouse Gas Tailoring Rule*. Dr. Brooks Mendell, Amanda Hamsley Lang, and Dr. Tim Sydor. December 2010.
[5] E.g., *BMP effectiveness and related water issues*. Dr. George G. Ice. In Proceedings of the Louisiana Natural Resources Symposium, Louisiana State University. 2005.

UNITED STATES BUSINESS AND INDUSTRY COUNCIL

FIGHTING FOR AMERICAN COMPANIES AND AMERICAN JOBS SINCE 1933

TO SAVE AMERICAN MANUFACTURING:

USBIC'S PLAN FOR AMERICAN INDUSTRIAL RENEWAL

Kevin L. Kearns, Alan Tonelson, and William Hawkins

Although warnings about the crisis engulfing American manufacturing have been intensifying for several years now, the sector's woes continue to be significantly underestimated – certainly by official Washington and even by many manufacturers themselves. In fact, despite the current boost in growth fueled by deficit spending, tax cuts, mortgage re-financings, and other one-time stimuli, the decline of American manufacturing is fast nearing the point of irreversibility -- at least from the standpoint of restoring to world leadership a critical mass of industries producing in the United States.

The nation, in short, faces a manufacturing emergency. Unless drastic measures are taken quickly, this emergency will turn the United States into a second-class manufacturing power, greatly diminishing its own future economic prospects. Further, national security and flexibility in foreign affairs will be severely compromised. Finally, the international imbalances being created by the manufacturing crisis will likely push the world into a major dollar crisis and could cause a protracted depression.

In part, the manufacturing crisis reflects the economy's latest cyclical downturn and the deflating of the bubble of the 1990s. Likewise, the manufacturing employment portion of the crisis stems in part from the increases in productivity in recent years. But neither of these factors sufficiently explains the root cause of manufacturing's current troubles, which are the worst by many measures since the end of World War II, and that is the cumulative and continuing effects of two decades of misguided, ill-advised, and weak-willed U.S. trade and globalization policies.

During this period, Washington has consistently failed to open foreign consumption markets adequately to U.S. producers – despite years of promises and the fanfare that greeted each new trade agreement. In addition, the American government has failed miserably to combat predatory foreign trade practices aimed at undermining U.S. producers in their home market. Perversely, Washington has responded to these failures by encouraging U.S. manufacturers to supply their home market from low-cost third world production platforms like Mexico and China. And most U.S. multinational corporations, and indeed some of their smaller suppliers, have responded with enthusiasm.

NO TIME TO LOSE

The most serious global macroeconomic dangers stemming from the continued flight of American manufacturing overseas have to date been avoided and may be postponed still further by continued financial policy legerdemain – though the faster America's international debts keep rising, the more difficult the challenge of correcting the imbalances. But regardless of when the crunch actually comes, the weakening of domestic manufacturing is already undermining the material foundations of American national success.

The prolonged wage slump triggered by the overseas migration of America's best-paying jobs on average has been rippling through the U.S. economy and American society for at least two decades. The loss of these important jobs represents a shrinking of the employment base needed for a middle-class standard of living, stable families, and the local and state tax revenues necessary for a first-world level of responsibly financed public infrastructure and social services. Consequently, Americans find increasingly at risk their hard-won 20th century gains in access to quality education, health care, and retirement security (whether paid for by a solvent public sector or a sufficiently broad-based and profitable private sector).

In addition, the manufacturing crisis raises serious questions about the U.S. economy's ability to maintain a high-tech, world-leading military without worrisome dependence on foreign products and technologies. Although it is true that defense-related imports come overwhelmingly from long-time allies or traditionally friendly countries, it is just as true that they are growing rapidly at a time when major disagreements increasingly mark the relationships between the United States and these countries.

Further, the massive loss of tax revenue – both corporate and personal – directly attributable to a disappearing industrial base will undoubtedly constrain America's ability to sustain military operations in both peacetime and wartime at levels that U.S. policymakers have come to take for granted. Thus the country faces a future in which the ability to project power and thereby affect events and outcomes the world over will be much more limited than anytime in the last century and a quarter.

Most worrisome, the decline of American manufacturing is quickly feeding on itself and gaining unstoppable momentum. Washington's continuing failure to secure equitable terms of trade forces more and more U.S. firms to compensate by outsourcing. These moves create powerful pressure for growing numbers of the remaining hold-out companies to follow suit.

The migration of prime contractors overseas inexorably pulls much of their supply chains with them. The export of blue-collar production work leads to the export of white-collar manufacturing-related work, as companies seek the advantages of locating researchers and designers near the factories they service. In fact, there is a continuous feed-back loop between R&D efforts and the factory floor, with the two functions, R&D and production, operating in tandem. And as is well documented, R&D and other technology work often produce a clustering effect, which draws labs and similar facilities from other industries in search of new synergies. The notion that the United States will retain high-end design functions while letting production migrate overseas is wishful thinking. Without major globalization policy changes, this vicious cycle of manufacturing flight cannot be turned into a virtuous cycle of manufacturing resurgence.

LESSONS OF THE RECENT PAST

The following action plan for saving and reviving U.S. industry incorporates recent policy lessons that Americans simply can no longer afford to ignore.

First, although America's regulatory and tax systems have unnecessarily raised domestic business costs in many instances, the manufacturing crisis springs from far deeper roots. No regulatory, health care, or tax reform schemes that would produce acceptable economic, social, or political results can overcome the damage being done to American manufacturing by today's globalization policy failures. Improved industrial competitiveness cannot and should not be based on gutting the basics of a just, humane, and inclusive society. Fundamentally new globalization policies are the *sine qua non* for saving and reviving American manufacturing.

Second, the United States will always have more control over its own actions than over the actions of other countries. Therefore, the keys to reversing American manufacturing's decline lie neither in more market-opening trade agreements nor in efforts to micro-manage economic and social conditions overseas. Despite decades of so-called free trade agreements, too many foreign markets still remain too closed to U.S. exports. The main reason: Most of the world's countries view trade as a zero sum game, with a piece of the American domestic market as the prize. The handful of economies wealthy enough to consume American-made goods can erect new trade barriers faster than U.S. negotiators can even identify them. The U.S. government, moreover, has too much trouble enforcing its own laws and regulations here at home to imagine that enforcing foreign laws and regulations, even those imposed by future trade agreements, will be successful.

Instead, to achieve the necessary results, the United States must focus on managing its own behavior and controlling access to its own market, unilaterally conditioning that access on a strategic analysis of its own national needs and on acceptable practices by its trade partners. In addition, the United States must rely mainly on its own power and leverage to achieve satisfactory terms of trade. As the record unmistakably shows, "one-country, one-vote" international organizations like the World Trade Organization (WTO) too readily turn into mechanisms for undermining American sovereignty, diluting American power, and maintaining global economic free-riding.

Finally, Washington must recognize that simply promoting economic growth and higher incomes abroad will not alone cure U.S. manufacturing's ills and rebalance America's trade accounts. Most countries refuse to trust their economic fates to market forces or refuse to permit higher domestic growth to draw in proportionately higher volumes of imports. In short, too little commerce around the world is free enough to allow potential future growth to serve as a U.S. trade and manufacturing cure-all.

The following U.S. Business and Industry Council manufacturing blueprint emphasizes short-term emergency measures for reversing domestic manufacturing's decline and laying the foundation for its revival. But it also includes longer-term proposals for ensuring that U.S. trade and globalization policies do not revert to the practices that have produced today's crisis.

EMERGENCY MEASURES

1. The President must declare that the United States faces a manufacturing, R&D, and outsourcing emergency no less threatening to America's long-term future than even the Great Depression. He must also make clear that the crisis stems mainly from the manipulation of world trading system by mercantilist countries and to the encouragement of "offshoring" by U.S. trade policy.

2. The President should create an Apollo Program-type task force in the federal government to oversee Washington's response to the manufacturing crisis. Its mission should be to restore domestic U.S. manufacturing to global preeminence and to boost domestic manufacturing employment and wages. The program should involve all agencies of U.S. government.

3. Federal R&D spending should be tripled and Washington should offer matching grants to industry. Special emphasis should be placed on tasking the national labs with helping to develop commercially viable, high-tech products to be manufactured in the United States.

4. The U.S. trade deficit should be quickly and dramatically reduced by imposing a "variable trade equalization tariff" on imports from countries running a trade surplus ten percent or greater of total bilateral trade. These tariffs should be increased each year until bilateral surpluses fall below the threshold level, at which time they would be removed. Tariffs should be imposed on U.S. trading partners as soon as surpluses reach the 10 percent threshold.

The United States should offer a partial exemption for the world's poorest countries, but only if concrete, measurable trade breaks from the other Organization for Economic Co-Operation and Development (OECD) countries follow suit and only if the developing country seeking the exemption demonstrates a commitment to democracy and to the economic advancement of all of its people. Exemptions are not intended to enrich corrupt, dictatorial elites.

In addition, exceptions would be made for energy imports and other commodities that are not found in the United States and for which no acceptable substitutes exist.

5. Companies manufacturing or assembling in the United States should be barred from treating service work performed overseas as a deductible business expense. Private companies that outsource overseas the processing of sensitive records, such as medical and financial records, must ensure that their subcontractors meet U.S. privacy standards or face stiff fines.

6. Washington should declare a moratorium on all current and future free trade talks pending development of new national trade strategy. The United States government clearly has lost the ability to negotiate trade agreements that enrich the great majority of Americans and strengthen the domestic manufacturing base on net. U.S. leaders should not engage in trade negotiations until this ability is regained.

To develop a fundamentally new national trade strategy, the President and Congress should appoint a National Trade Strategy Commission that includes representatives of business, plus civil society groups, such as labor unions and environmental groups. The business representatives on the Commission should be dominated by companies and industries that produce the great majority of their product and value in the United States. The Commission should also include representatives of the nation's science and technology and national security communities.

7. Washington should declare a moratorium on compliance with WTO panel decisions pending dramatic reform of the organization to reflect America's position in world economy. The United Nations Security Council veto and the International Monetary Fund/World Bank weighted voting systems are possible models of international organization structures appropriate to America's geopolitical and economic superpower status. If appropriate reform is not completed by the end of 2005, the United States should declare its intention to withdraw from the organization as soon as legally permissible.

8. Washington should declare a moratorium on compliance with North American Free Trade Agreement (NAFTA) panel decisions pending reform of NAFTA's dispute-resolution process to reflect U.S. predominance in the North American economy. In addition, NAFTA's rules of origin and external tariffs should be revised to offer meaningful trade preferences to goods with much higher levels of North American content.

9. The U.S. government should resolve the Foreign Sales Corporation (FSC) tax dispute with the European Union and the WTO by replacing the current FSC tax incentive with a major tax break for any company, either American or foreign-owned, that performs genuine manufacturing activity in the United States. Qualification for the tax break would require detailed certification that true manufacturing is occurring in the United States.

10. The United States should expedite procedures for anti-dumping and countervailing duty suits. The thresholds for standing, actionability, and remedies should all be eased. In addition, remedies should be extended to companies upstream and downstream from immediately affected industries, to ensure protection for suppliers and consumers, and to prevent foreign economic interests from using divide and conquer tactics against domestic industries.

11. The recent steel tariffs should be restored and expanded to cover industries using significant quantities of U.S.-made steel. Further, the option of extending the tariffs beyond the original three-year deadline should be left open in order to determine conclusively that foreign steel subsidization and dumping have ceased.

12. A stiff tariff should be imposed on countries determined by the U.S. government to be manipulating their currencies for trade advantage. In light of the Treasury Department's equivocation on the currency policies of Asian mercantilist nations, the definition of currency manipulation that now exists must be broadened. A strong dollar remains in the long-term interests of the U.S. economy, but foreign governments must not be able to distort trade flows to the advantage of their companies by giving them artificial cost advantages.

13. The defense industry must be treated by the federal government in a fundamentally different way from the commercial sector. It exists solely to serve the national interest and national security, and must be structured and managed accordingly. Therefore, a 65 percent U.S. content requirement should be imposed on all military procurement, rising to 80 percent in five years and 95 percent in ten years. This requirement should immediately cover the procurement of all goods and services for domestic military facilities and operations, and to the fullest extent possible cover foreign bases as well. Presidential waiver authority should be sharply limited, especially for countries that have records as problem traders or that demand offsets for purchases of American weapons systems.

14. Public money taken from the domestic economy by taxes or borrowing should be returned to the domestic economic economy by the procurement of American-produced goods and services. Procuring government services domestically is also necessary to ensure the continued privacy and security of the financial and health records of all Americans. Thus a 50 percent U.S.-content requirement should be imposed on all non-military federal procurement, rising to 80 percent in five years and 95 percent in ten years. Presidential waiver authority should be sharply limited. This requirement should immediately cover the procurement of all services for domestic facilities and programs.

15. The scheduled abolition of the Multi-Fiber Arrangement governing world trade in textile and apparel should be suspended indefinitely, pending a study of the effects of the MFA's abolition on domestic and third-world producers in these industries.

16. Stiff tariffs should be levied on countries that impose offset requirements on U.S. defense manufacturers.

17. The President should declare a moratorium on foreign acquisitions of U.S. defense-related companies pending completion of comprehensive study of the status of the roughly 1,500 such companies acquired since 1988 under the current policy framework and government screening system.

18. Strict, detailed country-of-origin labeling should be required on all food and agricultural imports.

19. Legal immigration into the United States should be limited to 500,000 annually. Enforcement measures to halt illegal immigration should be dramatically increased, including significant and sustained increases in the budgets of those federal agencies responsible for enforcing immigration laws.

Immigration at today's levels – both legal and illegal – can only serve to depress wages for American workers by artificially inflating the supply of labor. Moreover, the most likely victims of such massive immigration flows are the recent arrivals themselves, who are forced to compete directly for jobs with the unending flow of newcomers arriving right after them.

The H-1B visa program for technology workers should be abolished. A new federal commission comprised both of U.S. technology worker interests and tech industry interests should conduct a study to determine labor needs in technology industries and how they should be met.

LONGER-TERM MEASURES

1. Washington must insist that any future trade agreements be strictly reciprocal and strongly enforceable by the U.S. government, unilaterally if necessary.

2. Any future U.S. trade agreements must include provisions penalizing signatories for currency manipulation, which, in fact, can be used to defeat or offset the effects of reducing or eliminating trade barriers.

3. The President should launch a major diplomatic campaign to press other OECD countries to increase third world imports, enforceable unilaterally by tariffs on the products of any non-cooperating OECD countries. Under-importing of third-world products by the European Union and Japan in particular has greatly increased the pressure on the U.S. market to absorb third-world production. Greater burden sharing in this vital sphere is urgently needed.

Because the overriding interest of U.S. trade policy is to advance the economic interests of the great majority on the American people and the long-term security and prosperity of the United States, Americans should feel no special obligation to import goods or services from third-world, or indeed any other, countries. Such imports are especially unacceptable if they sacrifice the interests of American workers and domestic companies. But a campaign to get Europe and Japan to do more is needed: (a) to counter perceptions that U.S. protectionism is the greatest current barrier to third world economic development; (b) to highlight America's record in promoting this development; and (c) to call attention to the poor import records of the other main OECD countries.

4. The United States should focus any new trade agreements on high-income countries capable of serving as final consumers of U.S. exports. Washington's recent focus on third world countries capable of serving only as re-export platforms has been a substantial contributor to today's current trade deficits. In particular, the United States should seek a free trade agreement with Europe that excludes agriculture. Washington should also take stronger measures to open Japanese and Korean markets, including unilateral tariffs if necessary.

5. The President should remove responsibility for monitoring and enforcing trade agreements from the office of the United States Trade Representative (USTR) and place it in the Department of Commerce. As the lead agency for negotiating new trade agreements, the USTR has every incentive to soft-pedal the deficiencies in both the structure and functioning of these agreements. Dividing these responsibilities would eliminate a major policy-making conflict of interest.

6. Congress should enact strict foreign lobbying reform covering all federal officials, including lifetime bans on working for foreign interests for former senior Executive and Legislative branch officials.

7. The Commerce and Defense Departments should be designated as co-chairs of the inter-agency Committee on Foreign Investment in the United States (CFIUS), which reviews all proposed foreign acquisitions of U.S. defense-related companies. Exon-Florio filings must be made mandatory, and the threshold for investigation lowered. With the Treasury Department chairing this panel for its decade-and-a-half of existence, national security concerns have not been adequately addressed in the decisions of CFIUS, which generally reflect only Treasury's desire to see surplus dollars in foreign hands repatriated effortlessly.

8. The President should commission immediate reports – written by special Commercial Action Teams composed mainly of industry representatives and some government officials – on foreign subsidies existing outside the steel industry and implement tariffs to offset them. Washington should first offer to negotiate the abolition of such subsidies, but it must insist on results that are achieved quickly, as well as completely verifiable and enforceable by the U.S. government.

9. The federal government must publish more complete and timely foreign trade and investment data. This data should include detailed information on the importing, sourcing, and employment trends of all multinational companies and in fact all companies that do business in the United States. The provision of the data to the appropriate government agencies must be made mandatory.

10. The President should launch a comprehensive review of all U.S. defense alliances to determine which remain relevant to 21st century U.S. interests. The President should explicitly state that foreign policy and defense considerations will no longer automatically trump the economic interests of the United States and the American people.

STRONG – BUT ESSENTIAL – MEDICINE

No one should assume that implementing this manufacturing revival plan will be pain-free. All economic adjustments and transitions exact costs as well as create benefits. Those necessary to improve the long-run fundamentals of American manufacturing and strengthen the foundations of the U.S. and world economies as a whole will be that much more difficult because of the national and global economic excesses that were fostered since the completion of the "Tokyo Round" of international trade talks, but especially during the 1990s.

Specifically, some temporary slowdown in U.S. and global growth rates seems unavoidable. And thanks to the power of recklessly expanded international trade and investment, pushed unceasingly by economic ideologues and short-sighted multinational companies, achieving this slowdown will require serious restrictions on trade and investment flows.

Yet the only alternatives proposed to date are policies that are already proven failures, or that are surrenders to wishful thinking. Moreover, these responses can only postpone the day of reckoning, not prevent it. And just as permitting a disease to fester usually ensures that the needed treatment will be that much stronger, more painful, and less certain to work, permitting the manufacturing crisis to fester and inflating the global economic bubble further will only increase, not decrease the economic dangers facing America and the world.

The implementation of restorative measurers cannot be left to the good sense of Washington policymakers and elected officials. As a group, they have demonstrated convincingly time and again that they do not grasp the magnitude of the problems they have created and that they are bereft of comprehensive solutions. Instead, they prefer cosmetic changes, designed to relieve political pressure and ensure reelection.

If the necessary policy reorientation is to be accomplished, impetus must come from the remaining domestic manufacturers, their employees, their communities, and local and state governments, which are experiencing first-hand the budget crises caused in large part by globalization policies – whether the movement of plants overseas, company bankruptcies due to unfair foreign practices, high-tech and other services outsourcing, uncontrolled immigration with the resulting disproportionate consumption of social services, etc. In short, grass roots efforts must reach critical mass to force Washington to change two generations of misguided policies.

If any political leaders or economic experts know how to solve the manufacturing and trade crises without the significant trade restrictions featured in our action plan, USBIC would welcome their ideas with open arms. But we would also be wondering what they've been waiting for. The time for comprehensive action to save American manufacturing has long since passed. Very soon there will be little left to save.

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The United States Business and Industry Council (USBIC) is a non-profit, business advocacy organization of more than 500 firms from across the nation. From its founding in 1933, USBIC has championed America's domestic family-owned or closely-held companies—our nation's "main street" businesses—who create new products, jobs and growth here in the United States. The Council's mission is *to expand our domestic economy, with particular emphasis on our manufacturing, processing, and fabricating industries, and through the resulting growth to extend a high standard of living to all Americans.* USBIC positions on tax, business regulation, and international trade issues always receive significant attention, as Congress, the Administration, and the media know they can count on the Council for objective, principled viewpoints. USBIC plays a critical national policy role through its education campaigns, lobbying efforts, press conferences, bipartisan staff briefings, op-ed pieces, and publishing.

Mr. JORDAN. We welcome our panel of witnesses today.

First, we have Ms. Donna Harman. She is CEO of the American Forest and Paper Association.

Mr. Aris Papadopoulos—close, right? That is one of those fun names to say. It is like "Sheboygan," like, you know, one of those fun names to say. He is the CEO and chairman of Portland Cement Association. We appreciate you being with us today.

Mr. Michael Walls is the vice president of regulatory and technical affairs for the American Chemistry Council.

Mr. Michael Kamnikar is senior vice president of marketing and business development and incoming president of the Forging Industry Association.

And Mr. Terry Schimmel is vice president of technical services at Boral Bricks, Inc.

And David Foerter is the executive director of the Institute of Clean Air Companies.

It is the practice of the committee to swear all witnesses in, so if you would please rise and raise your right hands.

[Witnesses sworn.]

Mr. JORDAN. Let the record reflect that all the witnesses answered in the affirmative.

Thank you. And you can be seated.

In order to allow time for discussion, we would like for you to limit your comments to 5 minutes. There should be some lights somewhere that you can see.

Do we have those?

I don't know where our lighting system is. I will give you a little tap or something.

Oh, you have it in front of you. We can't see it because your names are there. OK, great, so you know when it gets close. It is sort of like the traffic signals we are all used to.

So now let's recognize Ms. Harman for 5 minutes.

STATEMENTS OF DONNA A. HARMAN, CEO, AMERICAN FOREST AND PAPER ASSOCIATION; ARIS PAPADOPOULOS, CEO AND CHAIRMAN, PORTLAND CEMENT ASSOCIATION, TITAN AMERICA LLC; MICHAEL P. WALLS, VICE PRESIDENT, REGULATORY AND TECHNICAL AFFAIRS, AMERICAN CHEMISTRY COUNCIL; MICHAEL KAMNIKAR, SENIOR VICE PRESIDENT OF MARKETING AND BUSINESS DEVELOPMENT, INCOMING PRESIDENT, FORGING INDUSTRY ASSOCIATION, ELLWOOD GROUP; BERNARD "TERRY" SCHIMMEL, VICE PRESIDENT, TECHNICAL SERVICES, BORAL BRICKS, INC.; AND DAVID C. FOERTER, EXECUTIVE DIRECTOR, INSTITUTE OF CLEAN AIR COMPANIES

STATEMENT OF DONNA A. HARMAN

Ms. HARMAN. Thank you, Mr. Chairman. I appreciate the opportunity to be here with you and with the other members of the subcommittee. My name is Donna Harman. I am the president and CEO of the American Forest and Paper Association. And the issue that you have brought before us today, to look at the challenges presented by the cumulative impact of the EPA regulations on

manufacturers, is, in our view, very timely and extremely important.

Many of the laws and, now, regulations that come from them were enacted decades ago, and they have contributed to significant improvements in air and water quality. The forest-products manufacturing supply chain is heavily regulated, and we will continue to adapt to well-reasoned regulations that are both affordable and achievable.

But we can not respond to regulations in a vacuum. Businesses in our sector must consider the global competitive environment in which they operate. They must compete for capital globally, and they need to have the time to build new regulatory requirements into their capital planning process. They must also be able to rely on government, so once a regulation is in place, it will not be selectively enforced or changed within a short timeframe.

Paper and wood products manufacturers are facing over 20 major regulations from EPA's Clean Air Act program alone. The pace and volume of regulation is not sustainable for the Agency, the States, or the companies that are required to meet them or the Congress whose obligation it is to provide oversight.

I would like to call your attention to the chart that was included with my testimony and on the screen that gives you just an idea of the regulations that are currently under the Clean Air Act, in the pipeline, that affect the forest-products industry.

Mr. KUCINICH. Excuse me, Mr. Chairman. Do you have a copy of that so we can look at it?

Mr. JORDAN. We will provide copies for all Members. Thank you.

Ms. HARMAN. And I believe it was attached to my testimony, as well.

Mr. JORDAN. OK.

Ms. HARMAN. The forest-products industry, like many other manufacturing industries, has been hit hard by the economic crisis. Since 2006, when the housing and economic crisis began, the forest-products industry has lost 31 percent of its work force, nearly 400,000 high-paying jobs, largely in small, rural communities that can barely afford to lose them.

The closure of a mill in a rural community, in a small town, has an enormous ripple effect when that mill is the largest employer and a major contributor to the local tax base and to the community programs. In many cases, without these facilities, these communities die.

Government regulations that are not cost-effective can exacerbate what is already a bad situation. AF&PA recently commissioned a study by Fischer International to assess the jobs impact of the cumulative burden of the largest pending and expected EPA regulations. The study concluded that several upcoming Clean Air rules would cause 62 mills to close and result in a direct loss of nearly 27,000 paper-industry jobs. If supplier jobs and jobs associated with the re-spending of worker incomes are included, the total job losses would reach nearly 114,000.

These results did not even include the boiler MACT rule, which I would like to talk about now.

Boiler MACT is just one of many rules adding to the cumulative burden. EPA's boiler MACT rule will require more than 90 percent

of boilers to make significant changes. And these changes are on top of the changes and the capital they previously invested during the past decade to comply with the 2004 boiler MACT rule. For the forest-products industry alone, our initial estimate of the capital cost of the final rule is about $3 billion and $11 billion for all manufacturing, plus the operating costs.

Unfortunately, as our technical experts delve deeper, their concerns about achievability and cost have grown. For example, the carbon monoxide limits for some biomass boilers actually became more stringent. Burning wet biomass will be particularly challenging even with the combustion improvements EPA assumes necessary to meet the more stringent requirements.

While Congress authorized EPA to adopt a health-based approach, they determined that they would not do so in the rule that was just recently released. We believe, if they were to do that, that we could reduce the capital costs required to meet this rule without any impact on human health.

I want to just, in my remaining time, mention two other rules: the Pulp and Paper MACT and residual-risk rules.

The Pulp and Paper MACT rule is intended to be a one-time rule. EPA concluded that rule about 10 years ago. We have implemented that rule. We have made significant changes and gotten a lot of environmental improvement as a result of it. Now they are talking about a redo. That is an example of the Agency going further than is necessary, overregulating and overcontrolling when it is not necessary to protect health.

The last rule I would like to mention briefly is the National Ambient Air Quality Standards. I think others will also mention this rule. This rule is another rule that, collectively, will cost the forest-products industry alone over $8 billion.

Your look at these and other rules today is critically important because jobs are at stake. Investment in making our facilities internationally competitive and securing their future is really what is at stake.

So thank you for taking the time to delve into and understand these issues. And I would love to answer your questions as followup after the other witnesses.

[The prepared statement of Ms. Harman follows:]

Statement of Donna A. Harman
President and CEO – American Forest & Paper Association
House Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending
Hearing on "Assessing the Cumulative Impact of Regulation on U.S. Manufacturers"
March 9, 2011

Chairman Jordan, Ranking Member Kucinich, and Members of the Subcommittee, my name is Donna Harman, and I am the President and CEO of the American Forest & Paper Association (AF&PA). Thank you for the opportunity to testify on the challenges presented by the cumulative impact of existing and expected new EPA regulations.

AF&PA is the national trade association of the forest products industry and advances public policies that promote a strong and sustainable U.S. forest products industry in the global marketplace. The U.S. forest products industry accounts for approximately 5 percent of the total U.S. manufacturing GDP. Industry companies produce about $175 billion in products annually and employ nearly 900,000 men and women. The industry meets a payroll of approximately $50 billion and is among the top 10 manufacturing sector employers in 48 states. AF&PA's member companies make more than 75 percent of the U.S.'s pulp, paper, paper-based packaging and wood building materials—products used every day that are made from renewable and recyclable resources that sustain the environment. The Association's membership represents the diverse spectrum of the forest products industry—from smaller family-owned mills, to large multi-product, public and private companies that manufacture pulp, paper, paperboard and wood products to independent forest owners.

We in the forest products industry are proud of our environmental stewardship using a renewable resource to make essential products that businesses and families use every day. The forest products industry is also a national leader in renewable energy because of its efficient use of its raw material—wood, a renewable, recyclable and reusable resource. In fact, we produce and use more renewable energy than all the wind, solar and geothermal power combined. Wood biomass is used to manufacture paper and building products, and generate energy that is used to power manufacturing facilities.

We applaud this committee and others for taking seriously the role of oversight of the laws that have been enacted. Many were enacted decades ago and have contributed to significant improvements in air and water quality. The forest products manufacturing supply chain is heavily regulated. We will continue to adapt to well reasoned regulations that are affordable and achievable. But we cannot respond to regulations in a vacuum. Businesses in our sector must consider the global competitive environment in which they operate. They must compete for capital globally and have the time needed to build new regulatory requirements into capital planning processes. They must also be able to rely on the government so that once a regulation is in place, it will not be selectively enforced or changed within a short timeframe.

A key issue for this committee to consider is the cumulative effect of all of the growing number of new regulations. We are facing over twenty Clean Air Act regulations, including Boiler MACT, that could have a dramatic impact on our industry. Attached to this testimony is a diagram of clean air regulations in the pipeline that will affect forest products industry manufacturing facilities. Some of these regulations are listed in the attached letter that we submitted in response to Chairman Issa's inquiry, but I should note that the letter also includes many other areas of concern, including EPA regulations on greenhouse gases, water, and waste, as well as OSHA workplace regulations, Fish and Wildlife Service endangered species regulations and Forest Service management of forest lands.

State of the Industry

The U.S. forest products industry – both paper and wood products-- has been facing trying economic times for more than a decade. U.S. production of paper and paperboard declined 10% between 2007 and 2010. While we experienced some rebound in market demand in 2010, the decline reflects the still-weak economy, competition from electronic media, and cost pressures, including from government regulations.

As a result, the paper industry has earned its cost of capital in only two of the past ten years, and has been forced to restructure to meet global competitive pressures. Paper and allied products industry employment has declined by 58,000 positions, equal to 13 percent of the industry's workforce as 52 paper mills have permanently closed their doors just since 2007.

According to a research paper by the Economic Policy Institute, for every 100 paper industry jobs, an additional 325 jobs are sustained in other industries resulting from the purchase of supplies and the re-spending of worker incomes.[1] Hence, the 58,000 jobs lost in the paper industry suggest total job losses inside and outside the industry of over 250,000.

The wood products side of the industry is also facing huge economic challenges due to the collapse of homebuilding, the leading end-use market for wood building products. Employment in the wood products manufacturing sector has declined by 31 percent (152,000 jobs) since the end of 2007, and by 45 percent (280,000 jobs) since the end of 1999. It will likely take years for wood product markets to fully recover.

Since many wood and paper mills are located in rural areas where these high-paying jobs cannot be replaced, the effect of these job losses on local rural communities can be especially devastating. The closure of a mill in a small town has an enormous ripple effect when that mill is the largest employer and a major contributor to local taxes and community civic programs.

[1] Economic Policy Institute, "Updated Employment Multipliers for the US Economy" (2003).

Government regulations that are not cost-effective can exacerbate what is already a bad situation. For instance, a recent study conducted for AF&PA by Fisher International concluded that several upcoming Clean Air rules other than Boiler MACT would cause 62 additional mills to close and 26,778 paper industry jobs to be lost. If supplier jobs and jobs associated with the re-spending of worker incomes are included, total job losses could reach nearly 114,000. Moreover, the recently announced "final" boiler MACT rules would likely cause thousands of additional job losses in the forest product industry and its related supply chain.

Boiler MACT

The so-called "Boiler MACT" is a regulation issued under the Clean Air Act Amendments of 1990. The statute requires that EPA regulate hazardous air pollutants from emission sources, including boilers, using maximum achievable control technology ("MACT"). Although most boilers already are well controlled for key pollutants, EPA's Boiler MACT rule will require more than 90% of boilers to make significant changes. For the forest products industry, our initial capital cost estimate of the final rule is over $3 billion -- and as our technical experts delve deeper, their concerns about achievability and cost have grown. Although the limits for mercury and hydrochloric acid became more reasonable for biomass boilers, the carbon monoxide limits for stoker fired biomass boilers actually became more stringent. When burning wet biomass, it will be very challenging, even with the combustion improvements EPA assumes necessary, to meet the more stringent limits.

Congress gave EPA the authority in section 112(d)(4) to set alternative standards for pollutants with health thresholds in cases where the regular MACT limits may be "far more stringent than necessary to protect public health...". Boiler MACT is exactly the type of situation Congress had in mind when giving EPA this authority. This rule covers boilers used in numerous industries and in a wide variety of applications and settings. The economics of each setting vary widely and impact a broad cross section of the economy.

While Congress gave EPA the ability to target controls for certain emissions where exposures are low, EPA has failed to use this authority despite repeated requests by members of Congress and many stakeholders. Any reservations about setting health based emission limits have been addressed in public comments. We provided toxicology verification that several of the pollutants have health effect thresholds and suggested a way to account for any additive effects between these pollutants. We also challenged EPA's perspective that any risk assessments must look beyond the boilers covered in this MACT when by definition MACT is limited to the source category. If EPA had provided a health based emission limitation for threshold pollutants such as manganese and hydrogen chloride that is set for each qualifying facility, then costs could be reduced while still protecting public health.

We think EPA made the right choice in relying on cost-effective work practices for more boilers in the final rule, such as gas units, biomass boilers at small mills and back-up

boilers, providing an affordable way to reduce emissions. EPA could have and should have set flexible work practices for dioxin as well. Some of our mills are not even sure they can measure at the limits being imposed, let alone control for it. Moreover, the final rule barely begins to account for the tremendous variability among boilers by establishing additional subcategories and using new emissions data to set slightly more realistic limits. EPA continues to ignore what real-world, best performing boilers can achieve over the range of normal operating conditions. EPA should ensure that limits are technically achievable for biomass and new boilers to encourage the use of a broad range of fuels and foster new investment in state-of-the-art boilers.

Finally, EPA has created a confusing and inappropriate definition for secondary materials that are solid wastes rather than fuels when burned, shifting many boilers under the more onerous Incinerator MACT. The final Non-Hazardous Secondary Materials rule may cause various renewable biomass residuals to be classified as "solid waste," creating a stigma that that will result in them being landfilled rather than used as alternative fuels, as they previously have been, and which is essential to the economics of some operations.

The only new boilers that may be viable are those that burn natural gas. After many concerns were expressed about the proposed natural gas standards, EPA eventually adopted much more flexible work practices. The net effect may be to curtail energy options for new boilers. This not only puts all our eggs in one energy basket but also raises serious practical problems. Many boilers simply do not have access to natural gas because the infrastructure is not there. The economics of some manufacturers (including forest products) depend on the ability to use diverse energy sources. Our future will be jeopardized if we cannot use biomass in new boilers. We believe that penalizing renewable clean fuels like biomass and thereby increasing the use of fossil fuels, is counterproductive and contrary to the Administration's own energy policy.

We anticipate that the capital cost for all manufacturing from the Boiler MACT rule could be well over $11 billion, plus billions more in annual operating costs. A wide range of manufacturers and the jobs they sustain would be impacted, as well as municipal utilities, universities, hospitals, federal facilities and other facilities that operate larger boilers.

EPA Jobs Study on Boiler MACT

Much has been reported about the dueling jobs studies on the Boiler MACT regulations. The EPA recently released a Regulatory Impact Analysis, which indicated that the final Boiler MACT rule would range from destroying 4,100 jobs to creating 8,500 jobs. The midpoint of the range was 2,200 jobs created. EPA's jobs analysis was based on a 2002 paper by Morgenstern, Pizer and Shih published in the *Journal of Environmental Economics and Management.*

In using the Morgenstern study, the agency relied on a model that was predicated on data from the1979-1991period. While the Morgenstern findings may have indeed been relevant for the 1980s when people had to use paper and foreign competition was not as keen, it needs to be rethought and updated to reflect today's reality. With increased

foreign competition, electronic competition, and a weak economy, the paper industry is in a far different place today as compared with the 1980s. The EPA's approach fails to recognize that reality. We believe an updated methodology should be used for assessing job losses or gains reflecting today's global competitive factors.

As explained earlier, the U.S. forest products industry has already lost a large percentage of its workforce. If more mills are forced to close their doors permanently we will lose additional high paying, tax generating jobs. Exports will drop and imports will increase since no other country is contemplating requirements this extreme.

Other Pending Clean Air Regulations

Pulp and Paper MACT and Residual Risk:

EPA is considering redoing the Pulp and Paper MACTs issued a decade ago even though MACT is supposed to be a one-time program. Given the stringency and unachievability of the Boiler MACT, we are very concerned that a similar approach will lead to a rule with over $4 billion in additional capital costs. EPA's obligations are to look at the health risks that remain after MACT, not a total MACT do-over. We believe that the original MACTs reduced emissions significantly (and at great expense) to the point where remaining risks are generally very low based on the extensive information the industry has provided EPA. In addition, any plans to regulate hydrogen sulfide (which could cost close to $3 billion) should be abandoned, since emissions are below levels of concern. Given the accelerated consent decree schedule, EPA should focus its resources on making a "Residual Risk" determination using reasonable risk assessment methods, data and assumptions, taking costs into account as Congress required in the Clean Air Act.

National Ambient Air Quality Standards (NAAQS):

The National Ambient Air Quality Standard (NAAQS) program has greatly reduced emissions of criteria pollutants. Air quality has improved dramatically for all six NAAQS pollutants at significant cost to industry bringing many areas into attainment – and more reductions are on the way under existing programs. The forest products industry has been part of these reductions, reducing sulfur dioxide and nitrogen oxides by between 25 and 35 percent in the last fifteen years alone, as well as cutting emissions of hundreds of thousand of tons of particulate matter (PM) and volatile organic compounds (VOCs).

Yet, further tightening of the NAAQS is underway with the short-term NOx and SO_2 NAAQSs finalized last year and the ozone and PM NAAQS scheduled for this year. Collectively, these NAAQS revisions could cost the forest products industry over $8 billion in capital costs. Of equal concern is the permitting gridlock caused when mills cannot satisfy modeling criteria for plant improvements (even ones that reduce emissions), preventing mill modernization and damaging competitiveness. EPA's standards are so close to background levels for some pollutants that even the dust from roads around a mill are enough to exceed modeling parameters and potentially stop permit revisions.

Under the Clean Air Act, Congress directed EPA to consider, every five years, whether any changes are needed to the NAAQS. In March 2008, EPA replaced the 1997 ozone standard with a new, more stringent standard. Even before that standard will be fully implemented, EPA is considering tightening it further -- two years ahead of the usual statutory schedule. Last month, 38 newly elected Congressmen wrote to Administrator Jackson citing concerns about the impact on jobs and the economy and asking that she withdraw the proposed ozone rule and instead conduct a full science review under the usual five year schedule. A similar bipartisan letter signed by 51 House Members was sent to the Administrator last November. Given the significant economic burden imposed by the ozone NAAQS on the forest products industry and the still fragile economy, we agree that deferral is warranted.

Summary

Living with such an uncertain regulatory environment can not only cost current jobs, but it can prevent new jobs from being created. Companies frequently find themselves tangled in a web of rules and restrictions that result in the decision to simply not make an investment because of the ambiguity and uncertainty of the regulatory process. Others take a gamble and roll the dice that the rule they are making decisions under today will still be in place when their project is completed. When regulations such as Boiler MACT and NAAQS create significant uncertainty because of their affordability and achievability, investing in an energy efficiency project, mill modernization programs, or a new biomass boiler can be very risky, preventing job creation in rural communities that desperately need it. EPA has the power to protect public health while using its statutory authority to create more affordable programs. We hope the Committee's oversight activities will help encourage EPA to focus on the highest priorities. Thank you for taking the time to listen to some of the many regulatory challenges the forest products industry is facing.

Mr. JORDAN. Sure. Thank you, Ms. Harman.
Mr. Papadopoulos.

STATEMENT OF ARIS PAPADOPOULOS

Mr. PAPADOPOULOS. Mr. Chairman and congressional committee members, my name is Aris Papadopoulos. I serve as CEO of Titan America, a heavy construction material producer in eight States, employing over 2,000 Americans. I presently chair the Portland Cement Association that represents 97 percent of U.S. cement capacity, with nearly 100 manufacturing plants in 36 States and distribution in all 50.

Cement is to concrete what nails are to wood. Without it, our bridges, roads, dams, schools, and hospitals would be rubbles of rock. At $6½ billion combined revenue, we are a relatively small industry, but without us the entire trillion-dollar construction economy would come to a halt. Without cement, our already-deteriorating infrastructure would degrade to unsafe levels, along with our communities and quality of life.

The great recession has hit our industry very hard. Cement demand has dropped in half. Profitability has been wiped out. Yet we sought neither handouts nor bailouts. We cut costs, which, sadly, included more than 4,000 jobs. What remain are 15,000 well-paying jobs with average compensation of $75,000 and a high representation of minorities. But today these jobs are in jeopardy, and the spillover could affect millions employed in the construction sector.

Not only did the Stimulus Act fail to raise construction demand, but, at our weakest moment, this government's EPA, whose budget, by the way, was enriched 33 percent through the same act, launched an unprecedented regulatory attack against our industry.

This is not a static but a dynamic industry. In its century-long history, cement manufacturers have demonstrated their commitment to continuous improvement in environment stewardship. In the decade prior to this recession, it invested tens of billions of dollars in modernizing and expanding facilities with state-of-the-art technology that were win-win for both economics and environment. Today our industry is one of the largest recyclers of industrial and urban byproducts that would otherwise be landfilled.

Yet the current EPA has switched from win-win to win-lose. There should be no doubt that win-lose will lead to lose-lose. Other strategic materials, such as rare earths, once a vital U.S. industry but now controlled by China, are living proof that overregulation leads to offshoring.

This is not a choice between environment and economy, because the two go hand-in-hand, and when economic vitality suffers, so does environmental sustainability. Without strategic materials like cement, economic vitality cannot be sustained.

Without time to get technical, I would like to note that for one compound, mercury, EPA imposed standards 5 to 12 times stricter than those in Germany. The irony is that this rule won't even help the environment, as 80 percent of the mercury found in the United States originates from offshore. EPA has justified these rules with incomprehensible computer models, but they lack any empirical proof or field evidence.

Our economic study of EPA's rules concludes that two rules alone impose a compliance burden of $5.4 billion in the next 4 years, equal to 85 percent of this industry's total annual sales. They also increase production costs by 20 percent. One rule, NESHAP, will force almost 20 percent of U.S. plants to shutdown in 3 years. The industry could lose 25 percent, or an additional 4,000 jobs, by 2015. Assuming economic recovery through 2025, this reduced domestic cement capacity will force the United States to depend on foreign imports for 56 percent of its needs.

We conclude that, in totality, these rules make investing in the United States unattractive compared to overseas. In the end, neither the economy nor the environment win: American jobs and investment are lost; the same emittants reach Americans in even greater quantities from offshore; dependence on foreign cement follows the road of dependence on foreign energy. And with cement more cumbersome to import than oil, shortages and price volatility will become more common. This could hurt the entire construction economy, with impacts on infrastructure, housing, commerce, and jobs.

This industry is committed to its longstanding spirit and practice of continuous improvement and environmental stewardship, but we need a government that we can work with in a win-win, constructive manner.

Unfortunately, we feel that industries like ours are getting caught in the crossfire of the major assault against coal by global-warming forces in this country. Immediate action is needed to rescind these regulations when we are in the midst of one of the worst economic crises before they prolong or worsen the harm, and place a near-term moratorium on more rules. Congress needs to step up and take back legislative ownership if we are to revive private-sector confidence that will retain and create good jobs for Americans and restore economic prosperity.

We also need Congress to undertake broader legislative reform that will return EPA to its original purpose, strengthen standards of justification for rules, consider cross-border economic and environmental impacts, approach industry with win-win rather than win-lose frameworks, objectively inform rather than panic the public, and reduce wasteful environmental litigation.

Thank you for this opportunity to testify. I would be happy to answer any of your questions.

[The prepared statement of Mr. Papadopoulos follows:]

Committee on Oversight and Government Reform, Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending

Testimony of Aris Papadopoulos, CEO, Titan America
March 9, 2011

Mr. Chairman and congressional committee members, my name is Aris Papadopoulos. I serve as CEO of Titan America, a heavy construction materials producer in 8 states, employing over 2,000 Americans. I presently chair the Portland Cement Association (PCA) that represents 97% of US cement capacity with nearly 100 manufacturing plants in 36 states and distribution in all 50.

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The Great Recession has hit our industry very hard. Cement demand has dropped in half. Profitability has been wiped out. Yet, we sought neither handouts nor bailouts. We cut costs, which sadly included more than 4,000 jobs. What remains are 15,000 well-paying jobs, with average compensation of $75,000. But today, these jobs are in jeopardy, and the spillover could also affect millions employed in the construction sector.

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Yet the current EPA has switched from win-win to win-lose. There should be no doubt that win-lose will lead to lose-lose. Other strategic materials such as rare earths, once a vital US industry but now controlled by China, are living proof that overregulation leads to off-shoring. This is not a choice between environment and economy, because the two go hand-in-hand and when economic vitality suffers, so does environmental sustainability. Without strategic materials like cement, economic vitality cannot be sustained.

Without time to get technical, I would like to note that for one compound, mercury, EPA imposed standards on the U.S. industry 5-12 times stricter than those in Germany. The irony is that this rule won't even help the environment, as 80% of the mercury found in the U.S. originates from offshore. EPA has justified these new rules with incomprehensible computer models and a lack any empirical proof, or field evidence.

Our economic study of EPA's rules concludes that:

- Two rules alone impose a compliance burden of $5.4B in the next 4 years, equal to 85% of the industry's total annual sales. They also increase production costs by 20%.
- One rule, NESHAP, will force almost 20% of U.S. plants to shut down in three years;
- The industry could lose 25%, or an additional 4000 jobs by 2015;
- Assuming economic recovery thru 2025, this reduced domestic cement capacity will force the U.S. to depend on foreign imports for 56% of its needs.

We conclude, that in their totality, these rules make investing in the U.S. unattractive compared to overseas. In the end, neither the economy nor the environment win. American jobs and investment are lost. The same emittants reach Americans in even greater quantities from offshore. Dependence on foreign cement follows the road of dependence on foreign energy. And with cement more cumbersome to import than oil, shortages and price volatility will become more common. This could hurt the entire construction economy, with impacts on infrastructure, housing, commerce and jobs.

This industry is committed to its longstanding spirit and practice of continuous improvement and environmental stewardship. But we need a government that we can work with to create win-win national policies. Unfortunately, we feel that industries like ours are getting caught in the crossfire of the major assault against coal by global warming forces in this country.

Immediate action is needed to rescind these regulations, when we're in the midst of one of the worst economic crises, before they prolong or worsen the harm, and place a near term moratorium on more rules. Congress needs to step up and take back legislative ownership, if we are to revive private sector confidence that will retain and create good jobs for Americans and restore economic prosperity.

We also need Congress to undertake broader legislative reform that will:

- Return EPA to its original purpose
- Strengthen standards of justification for EPA rules
- Consider cross-border economic and environmental impacts in rule development
- Approach industry with win-win rather than win-lose frameworks
- Objectively inform, rather than panic the public, and
- Reduce wasteful environmental litigation.

Thank you for this opportunity to testify. I would be happy to address any questions you may have.

Mr. JORDAN. Thank you.
Mr. Walls.

STATEMENT OF MICHAEL P. WALLS

Mr. WALLS. Thank you, Mr. Chairman. Good morning to you and members of the subcommittee. I am Mike Walls, the vice president of regulatory and technical affairs at the American Chemistry Council.

Earlier this year, both the leadership of this subcommittee and President Obama called for an examination of existing rules to ensure that they don't create an undue burden on American businesses. We strongly support that effort.

We believe there is an appropriate role for regulation in encouraging behavior. Efficient and effective regulation can help markets function. Regulation can help address important public-policy objectives. But regulations promulgated without an analysis of the impact on the economy and the impact on jobs, including how multiple regulations compound those impacts, can have quite the opposite effect.

If manufacturing is to make a significant contribution to economic recovery, including the creation and maintenance of well-paying jobs, it is imperative that we have an accurate understanding of the impact of these proposed regulations. The full regulatory burden on any particular sector can only be known if that cumulative impact is assessed.

Now, the lack of cumulative-impact assessments is a fundamental shortcoming in the way government agencies develop and evaluate proposed rules. That shortcoming creates regulatory tunnel vision. It puts innovation, investment, and jobs at risk.

Now, ACC and its members have a keen interest in getting regulations right. Our industry is arguably America's most highly regulated industry. There is no aspect of chemical manufacture, distribution, user disposal that isn't regulated by one or more Federal, State, or local requirements.

Now, while we understand that substantial benefits can flow from regulation, our industry also understands that very regulation can translate to fewer American jobs, a less competitive economic position, and reduced innovative capacity.

Now, a quick example is useful. Our industry stands right now on the cusp of the most significant energy and feedstock development in a generation. The market changes that are occurring as a result of the vast shale gas formations around the country have the potential to put our industry and our economy in a significantly improved global competitive position. The game-changing nature of shale gas can bring billions in new capital investment, thousands of new jobs, and more than $100 billion in additional economic output and Federal, State, and local tax revenue—just flowing from those shale gas activities and the downstream uses of it. But that game-changing development could be impacted severely if regulatory barriers minimize the ability to capitalize on the opportunity.

Now, ACC has analyzed the impact of regulatory burdens across eight major regulatory programs at EPA and at other agencies. That suite of regulations alone could impose a cumulative burden

on our industry of over $15 billion between 2011 and 2020, with undiscounted annualized costs as high as $2.7 billion a year in the out-years.

Now, we are not saying that those rules, collectively or individually, would eliminate any potential jobs-creating investment. But we are saying that those costs, those burdens, are very relevant to the market decisions about where and when investments are made. So the compounding effect of those compliance costs diminish the resources available to make meaningful long-term investments that create jobs, promote innovation, and solidify our competitive position.

The Federal regulatory process and analysis of regulations can be improved. We would like to see OMB and the individual agencies update their respective economic impact analysis guidance to require cumulative impact of multiple regulatory actions. We would like to see agencies identify and catalogue the sectors impacted by a new regulation and even extend that approach into the paperwork burden.

Agencies should seek impact from the affected regulated community before developing a proposed regulation. It goes to the win-win that is possible from an early engagement, so that the public, the government, and the regulated community all benefit.

We would also like to see Federal agencies consider the regulatory-induced employment changes as either a cost or a benefit in their assessment and not consider them some indirect cost that is not routinely assessed.

Mr. Chairman, CCC supports the efforts to ensure that cumulative impact of Federal regulatory programs is considered as new regulatory requirements are considered.

And I will just leave you with one final thought. If our regulatory agencies are capable of assessing the cumulative benefit of their regulatory programs, surely they are capable of assessing the cumulative burden.

Thank you.

[The prepared statement of Mr. Walls follows:]

Testimony of
Michael P. Walls
Vice-President, Regulatory & Technical Affairs
American Chemistry Council

Assessing the Cumulative Impact of Regulation
on U.S. Manufacturers

House Subcommittee on Regulatory Affairs, Stimulus Oversight,
and Government Spending

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I. Introduction

The American Chemistry Council[1] very much appreciates this opportunity to provide testimony on the need to improve the assessment of the cumulative impact of Federal regulations on the U.S. manufacturing base. At a time when the Nation expects manufacturing to make a significant contribution to our economic recovery, including the creation and maintenance of well-paying jobs, it is particularly important that we understand the role regulations will have in helping or hindering the attainment of that objective.

Earlier this year, both President Obama and the leadership of the House of Representatives called for an examination of existing rules to ensure they are not creating an undue burden on American businesses that will hinder innovation and competitiveness or cost U.S. jobs. While we agree that it is important to scrutinize specific rules, we also believe that the Congress and administration should take the opportunity to fix fundamental deficiencies in the regulatory process. Specifically, we have called for an improved assessment model that reflects cumulative impacts of regulations; consistent standards for the consideration of scientific data regardless of its source; and for greater transparency in the rule making process so methodologies and consequences can be more clearly understood. Therefore, we welcome today's hearing in particular because it shines a light on flaws in the process that must be resolved if we are to expect more rational regulatory outcomes in the future.

ACC believes that the process of Federal regulatory impact analysis can be improved significantly by regularly and comprehensively assessing cumulative regulatory impacts and

[1] The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a $674 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies are among the largest investors in research and development. It is also one of the nation's most heavily regulated industries.

employment impacts. Unfortunately, current practice relegates both of these elements to minor roles in impact analyses, if they are even acknowledged. Efficient and effective regulation can help markets functions and address important public priorities that the market might otherwise not address, but that objective is compromised to the extent that regulations are not grounded by realistic impact assessments.

The business of American chemistry is the fundamental building block for the economy. Ninety-six percent of all manufactured goods are touched by chemistry at some point in the production cycle. Nearly 27% of U.S. GDP is generated from industries that rely on chemistry, ranging from agriculture to oil and gas production, from semiconductors and electronics to textiles and vehicles, and from pharmaceuticals to residential and commercial energy efficiency products.

Our industry directly employed 780,000 Americans as of 2010, in relatively high-paying, quality jobs. But because chemistry is a "force-multiplier" in the economy, each of those jobs supported an additional 5.5 American jobs in the industries that use chemistry to manufacture other goods, meaning that some 4.3 million Americans are working in the industries that rely on chemistry to drive economic growth, innovation, and American competitiveness.

The economic reality for the business of U.S. chemistry is that our companies operate in an intensely competitive global environment. Significant increases in the cost of doing business – such as the increases in capital and operating costs that may be experienced as a result of regulatory decisions – can directly impact jobs in our industry. As noted above, an impact on jobs in the chemical industry has a consequent ripple effect on jobs throughout the rest of the economy.

ACC members have recent experience in how higher costs translate to job losses. The chemical industry is the largest manufacturing consumer of natural gas in the United States. Chemical companies use natural gas for both fuel and feedstock purposes. Between 1999 and 2005, natural gas prices in the United States quadrupled as the result of Federal policy-induced supply constraints. At the same time, other federal policy (such as the Clean Air Act) had the effect of creating new demand for natural gas in the power generation sector. Growing demand thus crashed into scarce supply, and natural gas prices in the United States rose to more than $12 per million BTU. Meanwhile, while some of our global competition still had access to gas supplies selling for as little as $1 per million BTU. As a result of those significantly higher costs, our industry lost nearly 140,000 jobs, many of which have not returned to the United States. Attachment 1 to this testimony graphs the energy cost-jobs relationships in that period.[2]

The chemical industry's recent experience, then, helps explain our interest in assuring a comprehensive analysis of the economic impacts of Federal regulation, including an analysis of the impact on jobs.

II. Regulatory Impact Assessment

ACC believes that regulatory impact assessments are a key component of the Federal regulatory process. The impact, or cost-benefit, assessments can enhance the transparency of the regulatory process, create a consistent framework for data collection and the identification of data gaps and uncertainties, allow for a useful comparison of alternative approaches, and establish a basis for the measurement of net benefits.[3]

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[2] Thankfully, natural gas prices have returned to much lower levels since 2005, largely due to reports that the United States has significantly larger natural gas reserves than had been thought to exist. In large part the return to improved energy economics has not been due to wholesale changes in Federal supply constraints, but rather reports that shale gas reserves in the U.S. could extend known reserves by at least 50 years.

[3] Resources for the Future Report, "Reforming Regulatory Impact Analysis," W. Harrington, L. Heinzerling, R. Morgenstern, eds., 13 (April 2009). Available at http://www.rff.org/RFF/Documents/RFF.RIA.V4.low_res.pdf

Executive Order 12866, signed by President Clinton in 1993, outlines 12 "Principles of Regulation" intended to guide Agencies in their regulatory activities, including direction on the conduct of impact assessments. Notably, the Executive Order requires that each Federal agency

> tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulation (emphasis added).[4]

The unfortunate reality, however, is that most Agency impact assessments contain no cumulative assessment consistent with Principle 11. Without such analysis, it is unlikely that agencies can identify the "least burdensome" means to achieve a desired regulatory outcome. Onerous regulations stem investment and job growth and agencies need to be explicit about alternatives that could achieve the same regulatory objective at less cost. In some cases, onerous regulation is the result not of an agency's actions, but because Congress has limited the agency's ability to consider costs in the authorizing statute.

There could be several reasons for the failure to completely adhere to Executive Order 12866. Under the terms of Principle 11, agencies need only conduct cumulative cost impact assessments "to the extent practicable." A lack of information within and among agencies is also a barrier to improved cumulative impact assessment. Principle 11 also recognizes that there may be "other" unidentified factors that may apply to a given impact assessment. The net result, however, is that Federal agency cost-benefit assessments tend to focus on the unique and independent impact of the regulatory intervention under review. ACC is aware of no Federal agency impact assessment that attempts to quantify or monetize anything beyond the marginal impact of a specific rule or regulation.

[4] Executive Order 12866, Section 1(b)(11).

The Office of Management and Budget (OMB) has provided important guidance to agencies in estimating the costs and benefits of proposed regulations in Circular A-4, produced in 2003. It is a "best-practices" document, providing direction to policy analysts on the myriad elements of a comprehensive economic impact assessment. Unfortunately, Circular A-4 contains no direct guidance to agencies on conducting an assessment of the cumulative costs of regulation.[5]

Circular A-4 is very clear that Agency assessments of significant regulatory actions shall include an analysis of the competitive impacts of regulations. Section 6(a) requires agencies to provide additional information to OMB that cover the "costs anticipated from the regulatory action . . . and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment and competitiveness) . . . together with, to the extent feasible, a quantification of those costs."[6] Yet again, most Agency impact assessments appear to largely ignore this element. In ACC's view, any assessment of competitiveness impacts necessitates, by definition, an analysis of the cumulative impact of regulations on the economy.

Among the Federal agencies, the Environmental Protection Agency's (EPA) impact assessments are generally fairly thorough. They suffer, however, from a consistent lack of cumulative impact assessment, even for regulatory proposals generated by the same office within EPA. While ACC believes the EPA should have some flexibility in designing impact analysis, a more consistent approach across the Agency – including a more consistent analysis of cumulative impacts -- could be achieved.[7]

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[5] Office of Management and Budget, Circular A-4, 15 (2003). Available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf

[6] OMB Circular A-4, Section 6(a)(3)(C)(ii) (emphasis added).

[7] In this respect ACC agrees with the conclusion outlined in the Resources for the Future report on the deviation between the analyses conducted by the Environmental Protection Agency and the guidance developed by the Agency for preparing economic analyses. The Report recommends that, among other actions, the use of a "check-list" approach on the minimum elements all impact analyses should contain. Resources for the Future, op.cit. fn.3,

EPA has provided some guidance on including multiple regulatory requirements in the baseline assumptions underlying the regulation being reviewed:

> Although regulations that have been finalized clearly belong in the baseline of a proposed rule, the baseline specification may be complicated if other regulations in addition to the one being implemented are under consideration or nearing completion. In this case it becomes difficult to determine which regulations are responsible for the environmental improvements and can "take credit" for reductions in risks. It is also necessary to determine how these other regulations affect market conditions that directly influence the costs or the benefits associated with the policy of interest. This is true not only for multiple rules promulgated by EPA, but also for rules passed by other federal, state, and local agencies. In addition to agencies that regulate environmental behavior, other agencies that regulate consumer and industrial behavior (e.g., OSHA, DOT, DOE) develop rules that may overlap with upcoming EPA regulations. Even the potential implementation of another such rule may affect the benefits and costs of an EPA regulation being analyzed due to the strategic behavior of regulated entities. Therefore, it is important to consider the impact of other rules when establishing a baseline. If another federal agency, state or local agency is legally required to impose a regulation but is still in the process of finalizing that regulation, then a baseline which includes this impending regulation should be considered. The intent of the baseline should always be to characterize the world in the absence of regulation being analyzed.[8]

Unfortunately, the limitation of this guidance is that it only applies to the development of a baseline set of assumptions about the rule being reviewed. At best, the guidance may result in an understanding of the marginal impacts of the rule under review, but does not necessarily shed light on the cumulative costs and impact of regulation on any specific sector, or on the economy as a whole.

Several examples illustrate ACC's concerns with the lack of cumulative impact analysis.

In 2010, EPA proposed a significant rule related to emissions limitations on industrial boilers and process heater, a suite of four regulations generally known as the "Boiler MACT" rules. EPA's own analysis of the regulation, conducted using an outdated 1999 vintage model,[9]

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at 223. In ACC's view, the assessment of the marginal and cumulative economic impact of regulations, including the anticipated impact on jobs, should be considered an element fundamental to all impact analyses.

[8] U.S. Environmental Protection Agency, "EPA Guidelines for Preparing Economic Analyses," Pre-Publication Edition, Page 5-12 (December 2010). Available at http://yosemite.epa.gov/ee/epa/eed.nsf/pages/Guidelines.html/$file/Guidelines.pdf.

[9] Regulatory Impact Analysis: National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, page 4-1 (Feb. 2011). Available at http://www.epa.gov/ttn/ecas/regdata/RIAs/boilersriafinal110221_psg.pdf.

indicated that the rules would result in some $9.5 billion in direct costs on the regulated community; an analysis conducted by the Council of Industrial Boiler Owners (CIBO) anticipated capital costs alone would total some $20 billion. The CIBO study also estimated that 330,000 associated jobs were at risk under the Boiler MACT proposal, 70,000 of which were directly tied to the affected industries/facilities.[10]

EPA recently adjusted its Boiler MACT economic analysis as it prepared for the publication of the final rule. The Agency's new analysis reduces capital costs associated with the rule by nearly one half to $5 billion, and a 40% reduction in annual operating costs through alternatives not contemplated in the proposed rule. Interestingly, EPA also explained that its economic model now suggests that 10% of the capital costs can be passed on to consumers in the form of higher prices.[11]

The Boiler MACT Regulatory Impact Analysis (RIA) does not provide a comprehensive analysis of employment impacts, although EPA noted that it anticipates the employment impact to be "small."[12] The Agency further noted that it intends to follow the direction of President Obama's recent Executive Order 13563 to explore ways to "quantify the job impacts in the pollution control sector that result from these and future regulations."

As a companion to the Boiler MACT rule, EPA published the Commercial Solid Waste Incinerator (CISWI) rule with an economic analysis outlining capital costs of $0.4 billion and

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[10] The Economic Impact of Proposed EPA Boiler/Process Heater MACT Rule on Industrial, Commercial, and Institutional Boiler and Process Heater Operators, (Aug. 2010). Available at http://www.cibo.org/pubs/boilermact_jobsstudy.pdf. ACC's analysis concluded that the chemical industry would shoulder some $3.8 billion in direct capital costs under the proposed rule, while losing between 8,000 and 16,000 jobs.

[11] Regulatory Impact Analysis: National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters, at page 4.3.

[12] Id. at pg. 4-7

annual costs of $ 0.23 billion.[13] Similarly, EPA finalized new source performance standards and emission guidelines for new and existing sewage sludge incineration units. However, EPA explained that due to the timing for publication of the final rule it was not able to perform a comprehensive economic or employment analysis, but estimated that capital costs and benefits were reduced by approximately 80% each based on modifications applied since the original proposal.[14]

Unfortunately, EPA's analysis of the Boiler MACT proposal contained no assessment – indeed not even an acknowledgement – that the very industries impacted by the rule would also be facing substantial compliance costs under other regulations then in effect or anticipated in the near future. For example, EPA finalized the NO_2 and SO_2 NAAQS in 2010, and began its reconsideration of the 2008 ozone NAAQS in 2009. The proposed rule and accompanying RIA were released in January 2010. EPA estimated that the potential compliance costs associated with the three NAAQS rules could exceed $40 billion.[15] The Boiler MACT RIA did not include these potential substantial compliance costs from these NAAQS standards.

In some cases, EPA's economic impact analysis has not been extensive enough to permit a cumulative analysis. In 2010, EPA proposed the so-called "tailoring rule" to apply greenhouse gas (GHG) permitting requirements to stationary sources of emissions under the Clean Air Act. The affected regulatory community includes all industries with the potential to emit more than a threshold amount of GHGs, including utilities, manufacturing facilities, universities and

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[13] Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units. Available at http://www.epa.gov/airquality/combustion/docs/20110221ciswi.pdf.

[14] Cost and Benefit Changes Since Proposal for Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units. Available at http://www.epa.gov/ttn/ecas/regdata/RIAs/ssiria110201.pdf.

[15] Updated Regulatory Impact Analysis (RIA) for the Reconsideration of the 2008 Ozone National Ambient Air Quality Standard, Table S1-1: Total Monetized Costs with Ozone Benefits and $PM_{2.5}$ Co-benefits in 2020 (Jan. 2010). Available at http://www.epa.gov/ttn/ecas/regdata/RIAs/s1-supplemental_analysis_full.pdf.

hospitals, among others. The Agency provided only an analysis of the costs that would be avoided by those facilities that would now be exempt from the permitting requirements due to an increase in the applicable emissions threshold. The Agency failed to provide an assessment of the economic impact of the tailoring rule on the stationary sources that would be required to seek permits, and furthermore failed to provide an assessment of the cumulative impact of regulations on those sectors.

For regulations that aim to reduce risks, effective cost-benefit analysis requires objective risk assessments. A typical chemical risk assessment requires numerous default assumptions to address uncertainty (e.g., assuming a particular impact of a chemical at human exposures below the lowest dose tested in laboratory animals). Sometimes, the Agency must choose between its default assumption and actual data that contradict the chosen assumption. Unfortunately, EPA often chooses to maintain a default assumption even in cases where the weight of scientific evidence would suggest otherwise. Such decisions create a disincentive for the collection and use of data and undermine the scientific credibility of the regulatory process. This problem occurs across program offices at EPA, but most notably in the Integrated Risk Information System (IRIS) program under the Office of Research and Development (ORD).

ACC is also concerned that EPA maintains the position that some of its decision have zero economic impact, and thus do not justify a cost-benefit analysis. For example, EPA has not conducted a regulatory impact assessment on its most recent draft Preliminary Remediation Goals (PRGs) for dioxins, apparently on the theory that the goals have zero economic impact. Because no remediation decision for dioxin has adopted a standard less stringent that the current guidelines, however, the PRGs are *de facto* regulations, and they very likely have an economic impact. In ACC's view, the PRGs should be subject to an impact assessment, including an

assessment of the cumulative impact of these and other regulations with similar impacts. A similar situation applies for risk assessments in EPA's Integrated Risk Information System (IRIS) process.

Federal agency assessments of the impact of regulatory proposals on jobs vary widely, despite the explicit direction in Executive Order 12866 that job impacts be covered.[16] In testimony before the House Subcommittee on Environment and the Economy just three weeks ago, Randall Lutter (the former chief economist and deputy commissioner for policy at the U.S. Food and Drug Administration) provided a summary of four EPA regulatory assessments.[17] Two of the assessments contained no information on job impacts and no explanation why that was the case. In the other two cases, the Agency outlined significant potential impacts on local job markets, and in the other, statistically insignificant positive effects.

Similar to ACC's comments regarding the guidance provided by OMB Circular A-4 on cumulative impacts, Mr. Lutter noted that A-4 provides no standards for the assessment of employment effects. He also noted that EPA's guidance on economic impact analysis states that "regulatory induced employment impacts are not, in general, relevant for a benefit-cost analysis" – a position that unfortunately leaves assessment of positive or negative employment impacts within the sole discretion of the analyst.

ACC submits that, without a regular and coherent assessment of the regulatory impact on jobs, a significant cost (or benefit) of a regulatory proposal will go unremarked. Perhaps even more importantly, the type and quality of the jobs created or affected by a proposed regulatory action need to be identified as specifically as possible. For example, it is important to know if a

[16] Executive Order 12866, at Section 6(a)(3)(C)(ii).
[17] Testimony of Randall Lutter before the House Subcommittee on Environment and the Environment, February 15, 2011. Available at http://energycommerce.house.gov/hearings/hearingdetail.aspx?NewsID=8219.

proposed rule will create or eliminate sustainable domestic manufacturing and service sector jobs, or if it simply creates more government jobs necessary to oversee implementation and compliance.

At this point in the Nation's economic recovery, understanding those impacts is necessary to ensure that Federal regulation does not erect unintended barriers to the capital formation and investments and protection of intellectual property that will drive future economic and job growth.

More to the point, the lack of cumulative and employment impact analyses is not consistent with either the letter or spirit of President Obama's Executive Order 13563, which he issued on January 18, 2011. In the Executive Order, the President outlined a clear vision for a regulatory system that protects "public health, welfare, safety and our environment while promoting economic growth, innovation, competitiveness and job creation."[18] ACC applauds the President on this Order, and looks forward to the analysis now underway in several federal agencies to respond to the President's direction.[19] To create value for the regulated community, of course, the analyses of federal regulatory programs (and the impact assessments that support those programs) need to result in substantive change.

III. Recommendations

ACC believes that the federal government's regulatory impact analyses can be significantly improved by, among other things, regular and comprehensive analysis of the cumulative impact of several regulations on a particular sector or sectors, or the economy as a whole. ACC recommends that OMB, and individual agencies, update their respective guidance on Circular A-4 and economic impact analysis guidance.

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[18] Executive Order 13563, Improving Regulation and Regulatory Review. Available at http://www.archives.gov/federal-register/executive-orders/2011.html.
[19] See, e.g., EPA, Improving EPA Regulations, 76 Fed.Reg. 9988 (Feb. 23, 2011).

- Consistent with the direction outlined by President Obama in his recent Executive Order, OMB and the Agencies should reaffirm their commitment to complete transparency in cumulative regulatory and employment impact analysis. The regulated community and the public should be able to easily understand the reasons why, or why not, an Agency has assessed these particular impacts, and in what detail. Such written guidance should be developed only after public notice and comment and external, independent peer review.
- In addition to analysis of each regulatory intervention independently, Agencies should analyze the cumulative impact of multiple regulatory actions on the economy. The cumulative impact analysis should consider the effects within the sector or sectors affected by the proposed rule as well as other existing or anticipated regulations similarly affecting those sectors. The analysis should not simply sum direct compliance costs as a surrogate for cumulative impacts, but must also include indirect impacts (such as market and competitiveness impacts). As was the case for OMB Circular A-4, the new guidance should be developed only after public notice and comment and external, independent peer review.
    - Agencies should start identifying and cataloguing the sector impacted by a new regulation (by NAICS codes or other appropriate mechanism to identify sectors impacted by regulations, for example). Agencies could also extend this approach to all federal paperwork requirements, all of which are updated every three years. The OMB Office of Information and Regulatory Affairs (OIRA) could ensure that agencies took this step. In a few short years, the government would have a fairly comprehensive federal database of regulatory burden by sector, which could help identify the most heavily regulated sectors. It is likely that OIRA would require additional resources to accomplish this effort, as their resources are currently concentrated on reviewing rules.
    - OMB should develop appropriate guidance on, or Federal agencies should be tasked with developing, a methodology for assessing the cumulative impacts of regulation (including a common methodology for identifying benefits) that can be uniformly and regularly applied. It is unlikely that we will see much change in regulatory impact assessments without such guidance or methodology.
    - Agencies should seek input from the affected regulated community <u>before</u> developing a proposed regulation. "Early engagement" is a win-win for the agency, for the business community, and for the public. Only by understanding the industry being regulated can an agency begin to understand what factors are important for competitiveness purposes. To gain a better understanding, an agency must interact with the industry, as early as possible in the regulatory process. Agencies should more routinely consider approaches such as advance notices of proposed rulemaking (ANPR), regulatory negotiations, and dialogue with potentially affected stakeholders.
    - Agencies should be required to demonstrate why regulatory requirements already in place are inadequate to achieve the policy objective. Indeed, any useful alternatives analysis should include a "no change" option. In some cases, improved enforcement of requirements already established could achieve the policy goal more efficiently and effectively than new regulation. The analysis

would help support a better understanding of the incremental impact of the proposed regulation.

- Federal agencies should be directed to consider regulatory induced employment changes as a cost or benefit, and to provide supplemental analysis on employment impacts that may arise from curtailment of business activities due to a regulatory intervention. That analysis should be more extensive than a simple assessment of "net" job creation or destruction, and should include analysis of transitional and distributional impacts. Specific job losses – or indeed even jobs that will not be created – should be assessed.
- Agencies assessing regulations intended to reduce risks, including EPA, should affirm the commitment to follow the weight of scientific evidence when assessing risk. The agencies should also provide the public, the regulated community, and their own risk assessors examples of a weight-of-the-evidence approach through guidance, to promote a more certain regulatory environment and create an incentive for scientific information. Such written guidance should be developed on the basis of public notice and comment and external, independent peer review, consistent with the approach taken for similar guidance in the past.
- Congress may wish to identify and reconsider the existing statutory limitations on the consideration of costs in Federal agency rulemaking authority. Removal of those limitations could lead to improved regulatory outcomes.

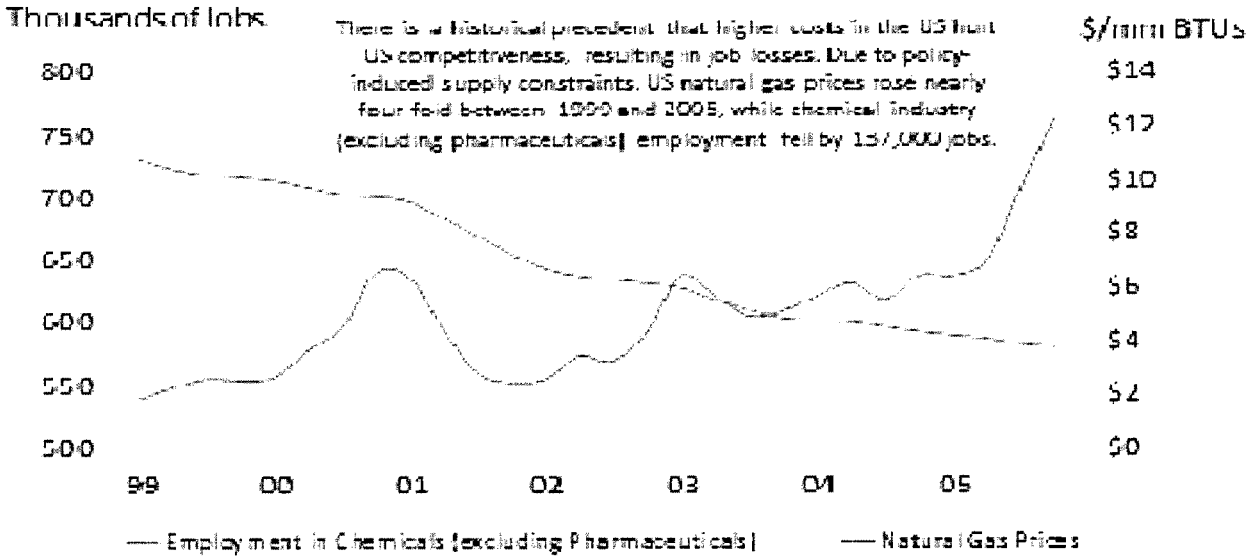
ACC's additional recommendations for improvements in Federal economic impact analysis are contained in Attachment 2.

IV. Conclusion

ACC looks forward to working with members of the Subcommittee to ensure that the important regulatory work of the Federal government is undertaken in a way that not only meets the policy objective(s), but relies on decision tools like cumulative impact analysis to create results that foster economic and job growth and competitiveness.

Attachment 1

Higher Costs Bring Job Losses



Sources: BLS, EIA

Attachment 2

Since the 1990's, economic analysis of Federal regulations have improved considerably as the economics profession has refined tools to quantify costs and benefits so that policy-makers **and** stakeholders can evaluate and compare regulatory proposals. With ongoing development of new methods to quantify costs and benefits of policy initiatives, however, the quality of Federal economic impact analysis can be further improved. The Office of Management and Budget (OMB) last updated its guidance on best practices (OMB Circular A-4) in 2003. OMB Circular A-4 provides a broad framework for evaluating costs and benefits, but there remains variation among agencies in its implementation.

ACC believes there is additional analysis that agencies should be doing to better assess the true impact of regulations, including employment impacts from the curtailment of business activities due to a regulatory intervention. ACC recommends the following improvements to Federal economic impact analyses:

- In addition to analysis of each regulatory intervention independently, analyze the cumulative impact of multiple regulatory actions on the economy. The cumulative impact analysis should consider the effects within the sector or sectors affected by the proposed rule as well as other existing or anticipated regulations similarly affecting those sectors. The analysis should not simply sum direct compliance costs as a surrogate for cumulative impacts, but must also include indirect impacts (such as market and competitiveness impacts).
- Provide supplemental analysis on employment impacts that may arise from curtailment of business activities due to a regulatory intervention. That analysis should be more extensive than a simple assessment of "net" job creation or destruction, and should include analysis of transitional and distributional impacts. Specific job losses – or indeed even jobs that will not be created – should be assessed.
- Provide more analysis of alternative regulatory interventions.
- Achieve greater consistency among programs and agencies to allow for comparison of costs, benefits, and cost effectiveness of the regulatory portfolio.
- Improve monetization of costs and benefits, including full costs of regulatory interventions (i.e., market impacts, changes in consumer behavior) beyond the cost of compliance. Cost assumptions should be grounded in reality. They should not simply reflect a prospective expectation of cost impacts, but should account for the retrospective (actual) costs incurred.

- Develop better presentation and evaluation of key parameters, including sensitivity analyses.
- Improve description and measurement of baseline conditions subject to regulatory intervention.
- Improve treatment of non-monetized costs and benefits.
- Provide alternative discounting scenarios beyond the arbitrary 3% and 7%.
- Improve benefits estimation, including the cost of potentially foregone benefits due to a regulatory intervention.
- Assure that research is peer reviewed by diverse group of experts within the stakeholder community.
- Remove legislatively imposed constraints that prohibit agencies from basing regulation on cost-benefit analysis.
- Develop a process for incorporating new research and data.

Mr. JORDAN. Thank you. Great point.
Mr. Kamnikar.

STATEMENT OF MICHAEL KAMNIKAR

Mr. KAMNIKAR. Thank you, Chairman Jordan, ranking members, and members of the subcommittee. Thanks for the opportunity to testify today.

I am Mike Kamnikar of the Ellwood Group, and our company produces specialty steel for other forgers and open- and closed-die forgeries. I am also the incoming president of the Forging Industry Association, with operations from member companies in 38 States.

The modern forging process is capital-intensive, and most forging companies are small businesses. Forging is one of oldest known metal-working processes, where metal is pressed or pounded or squeezed under great pressure to make high-performance parts. In a nutshell, nothing that moves on land or in the air or on the sea can move without forgings.

Mr. Chairman, U.S. manufacturers need a regulatory system that works. Appropriate regulations that improve health, safety, and the environment are a necessary part of doing business in the United States. However, when the regulatory process produces new regulations that do not provide additional benefits for the attendant costs and the regulatory community has little to no opportunity to participate in the process, the system is broke.

FIA believes there are two overall problems with the regulatory process. First, there is a lack of understanding of the manufacturing supply chain and effects of regulations on that supply chain. You cannot build a wind turbine with wind energy. Said another way, you cannot regulate, say, the power generation or automotive industry and not have an effect on the suppliers in that supply chain.

Second, there is a lack of transparency and sufficient stakeholder involvement in the regulatory process. When agencies bypass the Administrative Procedures Act or allow only brief public comment periods on complex, technical regulatory changes, we get ill-conceived regulations with unintended or unexpected consequences, and we undermine the integrity and the public's confidence in the rulemaking process.

Many FIA members are small and rely on the FIA to assess the potential impact of our government action on their operations and to weigh in on their action on our behalf. But the FIA does not have technical experts on all subjects at all times, so we need the time to consult with member companies of all sizes on proposed government regulation, including determining when specialized expertise may be needed.

I would like to highlight three examples of current and proposed regulations from my written testimony.

The first example involves EPA's regulation of greenhouse gas emissions under the Clean Air Act. Most forging work is done at 2,300 degrees Fahrenheit, and subsequent heat treatment is done at temperatures up to 1,900 degrees F and using natural gas, electric, or induction furnaces. There are no alternative technologies available.

EPA's decision to start regulating greenhouse gas emissions with large stationary sources means forgers will only have to worry about the potential effect of these regulations on their suppliers. Our company makes steel for the forgers, and we make forgings ourselves.

So how much will our electricity costs rise, and what will be the effect on other raw materials? When suppliers are regulated, we are very concerned that we will be pushed into a regulatory system merely because we use natural gas or make critical components.

The second example involves an EPA proposal for metal-working facilities to be considered in the development of the financial responsibility requirements under the Superfund law. The proposal also required that the entire metal-working industry be examined to determine if they should be subject to these requirements.

These types of financial assurance mechanisms for potential Superfund liability can be very expensive and extremely difficult to obtain for most metal-working companies, which are small- and medium-size and pose little risk, and we also carry insurance.

Finally, I would be remiss if I didn't mention the forging industry's concern with OSHA's recent proposal to reinterpret the definition of "feasible" as it related to engineering and administrative controls to reduce overall noise in the workplace. Fortunately, as we know, that was withdrawn.

Last, it is critically important that we regulate only that which requires regulation and only after a thorough vetting of the potential benefits, impacts, and costs to that regulation.

Thank you.

[The prepared statement of Mr. Kamnikar follows:]

TESTIMONY OF MICHAEL KAMNIKAR, SENIOR VICE PRESIDENT OF MARKETING AND BUSINESS DEVELOPMENT, THE ELLWOOD GROUP VICE PRESIDENT, FORGING INDUSTRY ASSOCIATION

BEFORE THE

COMMITTEE ON GOVERNMENT OVERSIGHT AND REFORM, SUBCOMMITTEE ON REGULATORY AFFAIRS, STIMULUS OVERSIGHT AND GOVERNMENT SPENDING

U. S. HOUSE OF REPRESENTATIVES

MARCH 9, 2011

Chairman Jordan, Ranking Member Kucinich, and Members of the Subcommittee, thank you for the opportunity to testify before you today on the cumulative impact of regulation on U.S. manufacturers.

My name is Mike Kamnikar, and I am Senior Vice President of Marketing and Business Development for the Ellwood Group, headquartered in Ellwood City, Pennsylvania. The Ellwood Group produces engineered, heavy metal sections for capital specialty equipment manufacturers in the United States and around the world. The company's seven operating business units - encompassing multiple plants in Pennsylvania, Michigan, Ohio, Texas and Canada - are dedicated to solving customers' needs for specially engineered forging steels, iron castings, forgings, and other alloy parts. Our customers are in a variety of industries, including oil and gas, mining, metals processing, power generation, aircraft, railroad, automotive, tooling, water transportation, and defense.

I am also the current Vice President and the incoming President of the Forging Industry Association (FIA). Headquartered in Cleveland, Ohio, FIA is the primary trade association representing the bulk of forging capacity in North America. 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 companies are small businesses.

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. Forgings are rarely seen or identified by consumers, because they 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. In fact, a forged drill bit was used to rescue the trapped Chilean miners;
- **Rail** – The Association of American Railroads requires all axles to be forged for locomotives. The traction gears and the engine crankshaft and camshaft in locomotives are also 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.

Let me now turn to the topic of today's hearing. U.S. manufacturers need a regulatory system that works. The Ellwood Group and other 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.

There are numerous specific examples of regulations and proposed rules that have a particularly burdensome impact on U.S. manufacturers like forgers, many of them under the jurisdiction of the U.S. Environmental Protection Agency (EPA). But before I provide

specific examples, let me first highlight 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.

   Regardless of the government agency issuing the regulation, there appears to be little to no understanding of the manufacturing process and the unintended consequences of certain actions throughout the supply chain. There also seems to be no recognition of the cumulative, and perhaps even duplicative or contradictory nature of regulation. 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. So when EPA proposes to regulate greenhouse gas (GHG) emissions, forgers have to be concerned about the potential increase in the cost of inputs like steel and natural gas, as well as when EPA will require small and medium sources to comply with new GHG emission limits. When small and medium sources are regulated under EPA's new GHG emission limits, forging operations may be forced 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 regulatory proposals would 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. In addition, many proposed rules are issued with only a 30 day public comment period. The Administrative Procedures Act (APA), when followed appropriately throughout the rulemaking process, allows for numerous opportunities for stakeholder involvement, as well as 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. This means at least 60 days of public comment to allow for businesses of all sizes to adequately assess the potential impacts on the proposed regulation on its business. It also means reasonable outreach to the

potentially regulated community to ensure that they are aware of the proposed rules and have an adequate opportunity to participate in the stakeholder involvement process.

The Ellwood Group has engineers and technical experts at our operations that can analyze proposed regulations in some areas for their impact on our operations. Many members of FIA are small and rely on FIA as their trade association to assess potential impact of government action on their operations, and to weigh in on that action on their behalf. FIA, like many metalworking trade associations, does not have technical experts on all subjects on staff at all times. We must have adequate time to consult with member companies of all sizes on proposed government regulation, including determining when specialized expertise may be needed.

When agencies bypass the normal process in order to limit the ability of those potentially affected to participate, or allow only a 30 day public comment period on complex technical regulatory changes, not only do we get ill-conceived regulations with unintended or unexpected consequences, we also undermine the integrity of and the public's confidence in the rulemaking process in general.

One way to improve credibility in the rulemaking process would be to pass legislation like HR 10, the Regulations from the Executive In Need of Scrutiny (REINS) Act, introduced by Representative Geoff Davis (KY 4). FIA strongly endorses requiring an up-or-down vote in Congress on all major rules, defined as those with an annual economic impact of $100 million or more, proposed by regulatory agencies.

I will now provide some specific examples of current and proposed regulations that we believe would 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 most forgers only currently have to worry about the potential effect of these regulations on our 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. EPA Proposal for Additional Classes of Facilities Such as Metalworking to be Included in the Development of Financial Responsibility Requirements

   On January 6, 2010, EPA issued an advanced notice of proposed rulemaking (APRM) that would require select industries to carry additional financial assurances under the Superfund law if a company handles "hazardous substances." As part of this APRM, EPA requested additional information on the fabricated metal industry, identified as NAICS code 332, to determine whether or not industries within this classification should be required to establish and maintain evidence of financial responsibility for potential releases of hazardous substances (e.g., insurance policy, surety bond, trust fund, corporate guarantee). These types of financial assurance mechanisms for potential Superfund liability can be very expensive and extremely difficult to obtain for most metalworking companies who pose little risk and already carry insurance. The forging industry is part of NAICS code 332, as are virtually all other metalworking industries and processes, including cold forming, casting, stamping, drawing, and surface finishing/metal plating. Each of these industries, including forging, has unique characteristics that differentiate it from all the others, both in terms of processes used and products produced. No determination can be made on the need for environmental financial assurance regulations without careful analysis of the individual industries and processes/chemicals used. Failure to conduct such analyses will result in unnecessary, overly burdensome regulations on these industries that are made up of small and medium-sized employers with very thin profit margins.

3. EPA Toxics Release Inventory (TRI) Article Exemption Rule

   EPA and the Office of Management and Budget (OMB) are in the final stages of considering a "clarification" of the Articles exemption pertaining to the Toxics Release Inventory (TRI). Should this clarification go into effect, virtually every manufacturer will be required to evaluate whether to file a TRI 313 Report, a process which will take significant investment in managerial, technical and clerical training and assessment. The estimated cost of this new assessment and reporting requirement on Fabricated Metals and Machinery Manufacturing companies alone is $209 million, and 2.5 employee weeks for first-time filers.

   Currently, metalworking industries that send solid scrap metals to a scrapyard must report these items as a "release" under TRI, even though that is the first step in the recycling process. Under Community Right to Know regulations, these metallic constituents must be reported to local firefighters and State and Federal environmental agencies, and fines of $32,000 per day are possible for paperwork violations. Yet the "articles" in question are in solid form, noncombustible and are not "released" in a fire or explosion. Thus a broad interpretation of "release" by EPA has the potential to create unnecessary alarm in the community and to jeopardize manufacturing operations, but with no readily apparent benefit to anyone.

4. 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 believe there is a need for continued cooperation among OSHA and employers, regardless of the specific program or proposal.

On October 19, 2010, OSHA issued a "reinterpretation" proposal 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 allowed for public input until December 20, 2010, but because the process was not a formal rulemaking, any public input received did not have to be taken into account. OSHA's announcement stated that all such "feasible" actions must be taken unless an employer can prove that making such changes will put it out of business. Although the agency has withdrawn its notice, it is important to discuss it as a perfect example of an agency issuing what amounts to significant rule changes with enormous consequences outside of the formal rulemaking process and with an unreasonably short time allowed for stakeholder involvement.

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 meant that the agency intended to enforce this new interpretation of "feasible" by issuing citations to employers without all "feasible" engineering and administrative controls in place, unless employers could 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 were 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.

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 have, without imposing undue burdens that don't provide additional protection but negatively impact global competiveness.

Only after pressure from many stakeholders did OSHA agree to extend the public comment period until March 21, 2011, and to hold one stakeholder meeting in Washington, DC - a location that I must point out is not home to U.S. forgers or others in the metalworking industry. However, because the announcement was made outside of the formal rulemaking process, OSHA was not required to take into account the stakeholder comments and could have begun enforcing the new interpretation as soon as March 22, 2011.

Thankfully, after continued and increasing opposition from virtually every sector of the manufacturing economy, concerns being raised by some in Congress, and one day after President Obama issued an Executive Order directing agencies to examine existing and pending regulations for possible overreach, OSHA withdrew this ill-conceived proposal on January 19, 2011. By this time, industries like ours had already spent substantial amounts of time and money trying to gather necessary technical information to respond in a very abbreviated time frame. This kind of regulatory process can only be seen as one that provides no benefit but causing economic harm to U.S. manufacturers.

5. National Labor Relations Board (NLRB) Overreach

In general, the NLRB and its actions would not be found in a discussion on the cumulative impact of regulation on U.S. manufacturers. However, over the last year, the NLRB has issued numerous notices and proposed rules that have the potential to affect U.S. manufacturers and our competitiveness and yet, there appears to be even less stakeholder involvement than with other government agencies rulemaking processes. Therefore, I feel it necessary to raise our concerns here.

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, in specific ways, 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.

In conclusion, I would point out that many current and proposed regulations address real issues and concerns in the workplace, and FIA members understand and support the need for reasonable regulations to protect the environment, worker safety and health, and a host of other workplace issues. But we also recognize, as do many in the Congress and the Administration, that U.S. manufacturers are facing unprecedented pressures in their efforts to remain competitive in the global economy. The trick is to find the balance between ensuring a safe and healthy workplace and allowing that workplace to compete in order to be able to continue to provide employment. That is where the current U.S. regulatory process is lacking. When the economy is booming, it can be tempting to think that the U.S. economy can absorb virtually any level of cost we may choose to impose. But as we have seen all too well in the last several years, economic downturns can force even the most efficient industries and companies to cut costs to remain viable, and unfortunately government-imposed costs cannot be easily cut. That's why it is critically important that we regulate only that which requires regulation, and only after a thorough vetting of potential benefits, impacts and costs of that regulation.

Thank you again for the opportunity to appear before you today to provide information on the forging industry, and our views on the cumulative impact of regulation on U.S. manufacturers. I would be happy to respond to any questions.

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Mr. JORDAN. Thank you, Mr. Kamnikar. We appreciate that.

We are also pleased to be joined by the chairman of the full committee, Mr. Issa. Pleasure having you with us today.

Mr. Schimmel.

STATEMENT OF BERNARD "TERRY" SCHIMMEL

Mr. SCHIMMEL. Good morning, Chairman Jordan, Ranking Member Kucinich, and subcommittee members. Thank you for the privilege of testifying about the cumulative impact of regulation on a small, essentially U.S. industry, the clay-brick industry.

My name is Terry Schimmel, and I am vice president of technical services at Boral Bricks. Boral is one of the largest brick manufacturers, with 22 manufacturing plants and 55 distribution centers across 11 States. I have been in the brick business for 39 years, and my responsibilities include oversight of emission control equipment for Boral's U.S. plants in compliance with environmental, health, and safety regulations.

Boral's energy-efficient brick kilns have reduced energy usage 15 percent over the past 5 years. It is only one example of our commitment to environmental stewardship. We take these steps voluntarily, without government mandates, but we are concerned about future viability, given the tremendous hit the industry has taken and the rising number of regulations.

At full production, Boral employs approximately 2,000 Americans. Today, nearly 1,100 of Boral's U.S. jobs, or 55 percent, have been temporarily or permanently lost due to the construction recession. According to the most recent census, brick production nationwide has dropped 66 percent since 2005, reaching the lowest level in 3 decades. Approximately 9,000 direct brick manufacturing jobs and 86,000 indirect brick jobs have been lost since 2006.

Brick industry business is only very slowly beginning to pick up, but there is no end to the escalation of the cost of doing business due to the regulations that derive no commensurate benefit to the environment, health, and safety. We believe responsible, reasonable regulations can be developed to protect both environmental and health, but the number of rulemakings in the pipeline and their anticipated mandates jeopardize brick jobs and our recovery.

Our greatest concern: EPA is currently redeveloping a Maximum Achievable Control Technology rule for clay brick and tile. The key word is "redeveloping," as the industry recently spent more than $100 million in capital costs alone to come in compliance with the original act rule that was finalized in 2003. Boral spent more than $12 million to install mandated control devices to meet the 2006 compliance date.

While the U.S. district court vacated the original MACT rule in 2007, more than a year after the compliance date, most States continue to enforce MACT limits as part of existing Title V permits. The result is that the brick industry has spent approximately $170 million in cumulative ongoing compliance costs for these controls since 2002, due to the now-vacated MACT.

EPA now is using the reduced emission levels achieved by kilns with control devices installed for the vacated rule to calculate an even more stringent baseline for all kilns. The technology to meet the final standard may not even exist if EPA cherry-picks data to

establish a standard that no real-world brick kiln has actually achieved. The EPA's cost estimate of the revised MACT is approximately $188 million per year, a staggering 20 percent cost-of-sales ratio for one rule.

Congress provided flexibility in the Clean Air Act to allow reasonable rules. As Borel and the brick industry continue to work with the EPA, we appreciate the Agency's willingness to discuss a health-based compliance approach. We are hopeful it could ensure that controls are installed when needed to protect the environment, rather than mandated controls that are unnecessary due to an imperfect data base.

EPA could use its discretion under the Clean Air Act to find alternative solutions to avoid unnecessary job-loss and expenditures that provide little to no benefit to the environment.

Our second big concern is OSHA's proposed crystalline silica rule that is expected to substantially decrease the permissible exposure limit across general industry.

Worker safety is vitally important to Borel. However, decades of scientific studies demonstrate that the risk from exposure to silica from quartz in brick clays and shale are not the same as risks from quartz used in other industrial settings. Silicosis caused by crystalline silica is essentially nonexistent in brick manufacturing workers. But because OSHA undertook the peer-reviewed process without providing an opportunity for industry input, this brick-specific evidence may not be reflected in the proposed rule.

The current PEL protects brick workers, and any reduction for the brick manufacturing industry would impose cost burdens for non-demonstrated health benefits. These two issues alone could overwhelm the industry; taken together with EPA's greenhouse gas regulations, however, that could encompass numerous brick kilns in the coming years and its tightening of National Ambient Air Quality Standards, the burden is unsustainable.

Given the important progress the Federal agencies have helped guide to protect the environment and safety, future steps should independently demonstrate reasonable costs for potential improvements. Congressional oversight should ensure maximum benefit per dollar invested for the regulatory compliance to prevent small, historical U.S. industries, like brick, from being regulated out of existence.

Thank you, and I would be happy to answer any questions.

[The prepared statement of Mr. Schimmel follows:]

Testimony of

Terry Schimmel
Vice President, Technical Services
Boral Bricks, Inc.
on behalf of the Brick Industry Association
before the
Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending
Committee on Oversight and Government Reform
United States House of Representatives

Hearing on "Assessing the Cumulative Impact of Regulation on U.S. Manufacturers"

Wednesday, March 9, 2011

Chairman Jordan, Ranking Member Kucinich, and members of the subcommittee, thank you for the privilege of testifying about the cumulative impact of regulation on a small, essential U.S. industry — the clay brick industry. Brick helps create long-lasting, sustainable construction across the country, from the brick used on homes, schools, churches, hospitals, and office buildings to the clay pavers on sidewalks and crosswalks, including Pennsylvania Avenue from the Capitol to the White House.

My name is Terry Schimmel, and I am Vice President of Technical Services at Boral Bricks. Boral is one of the largest brick manufacturers in the country, and we operate 22 manufacturing plants in nine states and 55 distribution centers in 11 states, including distribution locations in the districts of Congressmen Cooper and DesJarlais who serve on the subcommittee. I have been in the brick making business for 39 years. I have done virtually every job in a brick plant from supervisor to plant manager and served as Boral's Vice President of Engineering for 16 years. My responsibilities include the purchase and installation of emission control equipment and the company's compliance with environment, health, and safety regulations at the state and federal level.

Small brick companies comprise more than half of the industry, and like Boral's plants, they typically have been located in rural communities for more than 100 years and provide good-paying jobs where opportunities are limited. We live and raise our children in these communities, and Boral and the brick industry are committed to environmental stewardship. Clay brick are made from naturally abundant clay and shale that is locally mined. The mines are reclaimed according to federal and state guidelines that often include wetlands restoration, tree and natural habitat replanting, or watershed development. Clay brick has an unsurpassed life cycle and is completely recyclable. More than 80 percent of kilns are fired with natural gas, and the industry has reduced the overall energy needed to produce a brick to a fraction of what it was a few decades ago — to an average of 1,239 Btu (British thermal unit) per pound at peak capacity today compared to 4,000 Btu per pound used at some facilities in the 1970s.

Boral's state-of-the-art equipment and energy efficient kilns have reduced energy usage 15 percent over the past five years. We have adopted green building practices as part of our corporate identity and are a member of the U.S. Green Building Council (USGBC). We built the only LEED® (Leadership in Energy and Environmental Design) Gold certified brick manufacturing facility in the world in Terre Haute, Indiana. The facility utilizes methane gas from a nearby landfill as a substitute for natural gas, and it is a zero waste plant where nearly all

materials used in the process are recycled. Boral's Union City, Oklahoma facility also uses landfill gas, and our Salisbury, North Carolina plant is 100 percent waste-fired. Facilities in Augusta, Georgia, Phenix City, Alabama, and Gleason, Tennessee use high percentages of wood waste energy. In 2008, Boral became a Founding Reporter of The Climate Registry, a non-profit organization established to measure and publicly report greenhouse gas (GHG) emissions in a common, accurate and transparent manner across industry sectors and borders.

These steps were taken voluntarily without government mandates because they not only strengthen our business; they are the right thing to do. We strive to be an environmentally responsible company and a good neighbor, and we are mindful that we cannot do anything to help if we are no longer in business.

Any discussion of regulatory impact should consider the tremendous economic hit the industry has taken. At full production, Boral employs approximately 2,000 Americans, but today, nearly 1,100 of Boral's U.S. jobs, or 55 percent, have been temporarily or permanently lost due to the severe construction recession. According to the most recent U.S. Census, brick production nationwide has dropped 66 percent since 2005, reaching the lowest level in three decades. Historically, the brick industry has generated employment for approximately 200,000 Americans and contributed more than $9 billion in revenue, wages and goods to the U.S. economy annually. Today, it's approximately $5 billion with a 45 percent job loss. Approximately 9,000 direct brick manufacturing jobs and approximately 86,000 indirect brick jobs in distribution, design, installation and related fields have been lost since 2006.

Brick business volumes are only very slowly beginning to pick up in certain regions of the country, yet there seems to be no end to the escalation in the cost of doing business due to increasing government regulations. We are deeply troubled by the cumulative burden of expensive, complex regulations that provide no commensurate benefit to environment, health and safety, yet further jeopardize any glimmer of recovery for brick jobs and production. We believe reasonable regulations can be developed to protect both environment and health without further substantial job loss. Yet, both the mounting number of rulemakings in the pipeline and their anticipated mandates based on similar finalized regulations threaten our livelihoods and the future of our industry. Two regulations currently being developed would have the greatest industry-specific negative impact on jobs unless changes are made to the agencies' signaled approaches. These regulations alone could overwhelm the industry, and taken together with other pending economy-wide rules, the regulatory burden becomes unsustainable.

EPA Brick MACT Rulemaking

Of greatest regulatory concern under the Clean Air Act (CAA) Amendments of 1990, the U.S. Environmental Protection Agency (EPA) is redeveloping a Maximum Achievable Control Technology (MACT) rule for clay brick and tile that is expected in 2011 or early 2012. The key word is "redeveloping" as the industry recently spent more than $100 million in capital costs alone, a significant amount for a small industry, to come into compliance with the original Brick MACT rule that EPA finalized in 2003. The rule regulated hydrogen fluoride (HF), hydrogen chloride (HCl), and particulate matter (PM) that might be produced when the raw materials (clay and shale containing natural minerals) are fired in kilns to make bricks. Boral spent more than $12 million to install federally mandated control devices to meet the 2006 compliance date. Although the D.C. Circuit vacated the original Brick MACT in 2007, more than a year after the compliance date, most states continue to enforce these MACT limits as part of existing Title V permits, resulting in millions of dollars in ongoing annual costs even today for these controls. In

total, the brick industry has spent approximately $170 million in cumulative costs for purchase, installation, financing, operation and maintenance of control devices since 2002 due to the now-vacated Brick MACT, based on the number of years the devices have been controlling brick kilns.

U.S. brick makers now face an enormous inequity because the rule was vacated *after* the compliance date. Our previous good faith compliance is being used against the industry to further ratchet down the allowed emission levels in the revised rule. We have no assurance that EPA will not force compliance on a new rule that could be vacated yet again. For the new Brick MACT, EPA is using the reduced emission levels achieved by kilns with control devices installed for the now-vacated rule to calculate a new, even more stringent baseline for all kilns which could result in an unachievable rule.

In April 2010, EPA estimated the revised Brick MACT would cost the industry approximately $188 million per year[1]. Based on data from the U.S. Census Bureau, brick manufacturers' total revenue in 2009 was approximately $940 million. EPA's estimate results in a devastating 20 percent cost-to-sales ratio for this single regulation. The outcome will be higher costs and lost jobs as some brick companies may be forced to close plants because they cannot afford to even borrow the money required to replace existing controls or add newly mandated controls. The technology to meet the final standard may not even exist if EPA cherry picks single pollutant data to establish a multi-pollutant standard that no real-world brick kiln has actually achieved. While EPA has expressed its intent not to require existing viable controls to be removed and replaced, EPA's approach to establishing the new limits could lead to such a requirement.

Small plants of both small and large manufacturers are particularly vulnerable, and even the largest brick makers like Boral weigh the basic economics of continuing to invest millions in a plant that has been shut down for months out of the past two years. Boral Limited, Boral Bricks' parent company, is an international, publicly traded company, and each business unit and plant within that business unit must be viable on its own and return shareholder value. If we do not return a profit for shareholders, the company will move resources to other divisions in the U.S. or other countries, along with those jobs.

It does not have to be this way. Congress provided flexibility in the CAA to allow for reasonable rules, including basing the MACT floor on emission limits that real-world best performing sources can actually achieve; excluding mined, mineral-bearing raw materials from the MACT limit evaluation; including a health-based standard for pollutants that do not pose a risk because concentrations are below an established safe threshold; and excluding non-major sources when calculating the MACT floor for a category of "major" sources.

As Boral and the Brick Industry Association (BIA) continue to work with EPA on this rule, we appreciate the Agency's willingness to discuss a health-based compliance approach, which could provide the best chance of guaranteeing that controls are installed when needed to protect the environment, while also ensuring that controls are not needlessly mandated due to an imperfect database. We encourage EPA to use its discretion under the CAA to find additional solutions that avoid further job losses and unwarranted expenditures that provide little to no benefit to the environment.

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[1] EPA presentation at Pre-Panel Outreach Meeting with Potential Small Entity Representatives, April 20, 2010.

OSHA Crystalline Silica Rulemaking

The Occupational Safety and Health Administration (OSHA) is expected to propose a rule in April 2011 on occupational exposure to crystalline silica that will 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 manufacturing workers in the U.S. and elsewhere. We are concerned that OSHA undertook the peer review of its crystalline silica health effects analysis and quantitative risk assessment without providing an opportunity for input from potentially impacted industries. A transparent process would have allowed this brick-specific evidence to be considered prior to development of the proposed rule.

Occupational Safety Health Act rulemaking case law has made it clear that OSHA cannot ignore data as it relates to specific industries when regulating across a broad spectrum of industries. The brick industry should not be regulated based on quantitative risk assessment derived from exposure-response data from other industries handling silica-containing materials because the risks are different between industries. The current crystalline silica PEL is amply protective of brick workers, and any reduction in the PEL for the brick manufacturing 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

When EPA issued its greenhouse gas (GHG) regulations for motor vehicles, it deemed GHGs to be "regulated pollutants." This action triggered a complex New Source Review/Prevention of Significant Deterioration (NSR/PSD) program for stationary sources under the CAA, including carbon pollution standards. These rules have the potential to require significant investments in air pollution control devices or process modifications while providing uncertain environmental benefits. EPA established initial PSD and Title V applicability thresholds of 100,000 tons per year (tpy) for GHG emissions (measured on a carbon dioxide equivalent (CO_2e) basis). However, EPA is committed to lowering that level over the next several years, potentially to as low as the 25,000 tpy limit initially proposed. Thus, although only power plants and the largest industrial sources (potentially including the largest brick plants) are currently impacted under EPA's NSR/PSD pre-construction permit program, the stage is set for smaller sources, including numerous brick kilns, to be regulated in the next few years.

A single ten ton per hour (tph) brick kiln is estimated to emit more than 17,000 tpy of GHGs at full production. If the limit is reduced to 25,000 tpy, EPA's GHG rule could potentially cover a majority of brick facilities because NSR is based on the potential to emit, e.g., at full capacity, for all kilns at a single facility. The Best Available Control Technology (BACT) guidance being developed by EPA for implementation of the GHG NSR/PSD assessments may well be based on natural gas firing, but there is no exemption from the rigorous, costly permitting for natural gas units so prevalent in the brick industry. An exemption for these natural gas sources would recognize that the facilities are already employing BACT. Without it, the industry could be negatively impacted by the resulting protracted, expensive permit review processes as states

struggle to keep pace with the new requirements. Even if EPA ultimately requires little or no change to brick operations, 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_2 and PM (Particulate Matter)

In order to protect the overall air quality in our country, Congress directed EPA to establish and review National Ambient Air Quality Standards (NAAQS) for specific air pollutants known as "criteria pollutants." EPA is tightening all of the NAAQS which set maximum allowable air concentrations of sulfur dioxide (SO_2), particulate matter (PM), ozone, nitrogen dioxide, carbon monoxide and lead. Once these standards are established, states ensure that NAAQS are attained by developing and implementing a State Implementation Plan (SIP) for each air quality control region within the state. In addition, major facilities that build or modify large criteria pollutant emission sources must conduct an NSR/BACT review.

We are concerned that EPA's NAAQS approach could cause significant permitting issues for facilities that are considered "major" sources for any of these pollutants, as well as impact smaller brick kilns. In the past, SIPs 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_2, 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. For example, under the SO_2 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 should evaluate both past and future benefits of the current NAAQS programs that have yet to be fully implemented before it continues to reduce attainment levels that could stunt industries' economic recovery for limited health and environmental benefits.

Conclusion

These pending regulations create considerable economic uncertainty and could result in great expense and more lost jobs for the brick industry. The Brick MACT, in particular, has a chilling effect because the original rule was vacated after the compliance date. It is a good example of how companies who want to do the right thing to minimize emissions are penalized when the regulatory goalposts are moved despite good faith compliance. Congressional oversight is needed to ensure maximum benefit per dollar invested to comply with regulations to prevent small, historical U.S. industries like brick makers from being regulated out of existence.

Federal agencies such as EPA and OSHA have helped guide important improvements in environmental protection and worker safety over the past several decades. Given the vast progress that we have made, future steps should demonstrate reasonable costs for potential improvements in order to restore U.S economic growth. If small brick plants close in rural communities and consolidation occurs because regulations become prohibitively expensive for limited or no additional health benefits, residential and commercial brick construction becomes less affordable and less accessible for all Americans.

Mr. JORDAN. Thank you.
Mr. Foerter.

STATEMENT OF DAVID C. FOERTER

Mr. FOERTER. Thank you, Mr. Chairman, members of the subcommittee, for the invitation to share another industry perspective in the hearing on how regulations and requirements create real jobs in the American economy. I am David Foerter, the executive director of the Institute of Clean Air Companies [ICAC].

Today we would like to briefly highlight the fact that investments and efforts to clean the air we breathe creates real jobs for real people in the U.S. economy, and it saves lives. In these brief comments, I hope to impart a few realities from the perspective of a mature manufacturing industry.

For more than 50 years, the Institute has been the nonprofit national trade association of companies working to equip stationary sources—generally power and large industrial facilities—with air pollution control and measurement technologies. The Institute's members count to about 100 companies, leading manufacturers in both measurement and control. We believe, and history affirms, that equipping these sources ensures industrial progress while cleaning the air we breathe.

Here are a few realities I would like to highlight today. We know that investments in clean air technologies result in substantial returns in avoided health costs for the American public. We know that these same investments are plowed back into the U.S. economy as real jobs in my industry and many related industries. We know that many of the business interests testifying at these hearings also provide materials that are used in the manufacture of equipment in the air pollution control industry, and, as such, there is an innate need and desire to work toward sustainable solutions.

I find that these realities can be distilled down into a rather simple formula: The Clean Air Act spurs investments which creates jobs, improved health, and a modernized and more sustainable fleet. The formula has worked well for 40 years, and this is something we need now more than ever.

The principal function of clean air requirements is to clean the air we breathe. We, therefore, are heartened that a renewed interest in jobs has reintroduced one of the most amazing aspects of air pollution and control technologies: Simply, for every dollar spent, as much as $40 comes back as avoided health costs. This fact has withstood the test of time, and it is a testimonial to the value of the Clean Air Act, the technology innovations in our industry, and the combined efforts of industries to clean the air while ensuring industrial progress.

It is important not to lose focus that the safeguards are there to create cleaner air for all of us, helping to save lives and avoid or reduce illness. Fortunately, these safeguards are a win-win. To comply with them, companies will need to undertake construction projects. That means jobs in areas that are currently facing challenging times.

The clean air investments spurred by regulations and requirements create real jobs while satisfying their principal goal of healthy air. Most air pollution equipment for large sources is con-

structed or fabricated onsite and requires high levels of engineering and design, labor, and depends on component equipment and materials. This means jobs for skilled craft labor, such as boilermakers, and new upstream and downstream employment and economic benefits for a variety of industries and communities where they are located.

For example, building this equipment requires construction materials such as steel plate, alloy steel, fabricated steel components, structural steel, and concrete. In addition, these projects require engineered equipment and specialty materials such as slurry pumps, fans, motors, and catalysts. And to sustain operation of these systems, reagents such as urea, anomia, limestone, Trona, and activated carbon are needed, as well as other consumables such as fabric filters used for particulate removal.

While the focus of installing controls is on our industry, we rely on many other industries and employers to get the job done. And that is just what we have been doing with tremendous success for several decades: getting the job done where and when needed most.

As an industry, ICAC offers constructive comment on almost every major requirement that is out there. And these comments are part of the public record, and they demonstrate what we believe is constructive insight on how industries can make changes and still serve industrial progress.

A similar story exists for industrial sources, where we were looking at: The Clean Air Act spurs investments which create jobs, improved health, and a modernized fleet. We are at a juncture where necessary upgrades are long overdue, and an experienced work force is fully available to complete the effort.

In addition, the U.S. Environmental Protection Agency finalized a rule for the industrial boilermaker sector that is significantly less stringent and at a lower cost than was proposed last year. This is something we need now to get America back on the job and protect public health.

The reality is that my industry works constructively to help other industries comply with regulatory requirements.We are highly competitive, and we are looking at many technology solutions, not just one, often offering a suite of solutions.

In closing, President Obama's Executive order on January 18th characterized a regulatory system that "protects public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." I hope that I have been clear that is shared vision within my industry, where, for more than 50 years, the members have existed, prospered, innovated, and made a significant contribution to the U.S. economy.

I look forward to continued efforts that create real jobs, for real people, and real health benefits. Thank you.

[The prepared statement of Mr. Foerter follows:]

Oral Testimony of
David C. Foerter
Executive Director, Institute of Clean Air Companies (ICAC)

House Subcommittee on Regulatory Affairs, Stimulus Oversight, and Government Spending Hearing on "Assessing the Cumulative Impact of Regulation on U.S. Manufacturers"

March 9, 2011

Rayburn House Office Building, Room 2154

Representative and Chair Jim Jordan and Members of the Subcommittee:

Good morning and thank you for the invitation to share another industry perspective at this hearing on how regulations and requirements create real jobs in the American economy. I am David Foerter the Executive Director for the Institute of Clean Air Companies or ICAC. Today I would like to briefly highlight the fact that investments and efforts to clean the air we all breathe creates real jobs for real people in the U.S. economy – and saves lives. In these brief comments I hope to impart a few realities from the perspective of a mature manufacturing industry. For more than 50 years the Institute has been the nonprofit national trade association of companies working to equip stationary sources – generally power and large industrial facilities – with air pollution control and measurement technologies. The Institute's members include 100 companies. We believe, and history affirms, that equipping these sources ensures industrial progress while cleaning the air we breathe.

Here are a few realities that I would like to highlight today. We know that investments in clean air technologies result in substantial returns in avoided health costs for the American public. We know that these same investments also are plowed back into the U.S. economy as real jobs in my industry and many related industries. We also know that many of the business interests testifying at these hearings also provide materials that are used in the manufacture of equipment in the air pollution control industry and as such, there is an innate need and desire to work toward sustainable solutions. I find that these

realities can be distilled down into a rather simple formula – the Clean Air Act spurs investments which create jobs, improved health, and a modernized and more sustainable fleet. This formula has worked well for more than 40 years and this is something we need now more than ever.

The principal function of clean air requirements is to clean the air we breathe. We are heartened that renewed interests in jobs has also reintroduced one of the most amazing aspects of air pollution control technologies – simply, for every dollar spent, as much as 40 dollars come back as avoided health costs. This fact has withstood the test of time and is a testimonial to the value of the Clean Air Act, the technology innovations in our industry, and the combined efforts of industries to clean the air while ensuring industrial progress. It is important not to loose focus that the safeguards are there to create cleaner air for all of us, helping to save lives and avoid or reduce illness. Fortunately, these safeguards are a win-win. To comply with them, companies will need to undertake construction projects – that means jobs in areas that are currently facing challenging times.

The clean air investments spurred by regulations and requirements create real jobs in our industry and the U.S. economy, while satisfying their principal goal of providing clean healthy air. Most air pollution equipment for large sources is constructed or fabricated on-sight and requires high levels of engineering and design, labor, and depends on component equipment and materials. This means jobs for skilled craft labor such as boilermakers, and new upstream and downstream employment and economic benefits for a variety of industries and communities where they are located. For example, building this equipment requires construction materials such as steel plate, alloy steel, fabricated steel components, structural steel and concrete. In addition, these projects require engineered equipment and specialty materials such as slurry pumps, fans, motors and catalysts. And to sustain operation of these systems, reagents such as urea, ammonia, limestone, Trona, and activated carbon are needed as well as other consumables such as fabric filters used for particulate removal. While the focus of installing controls is on our industry, we rely upon many other industries and employers to get the job done. And that

is just what we have been doing with tremendous success for several decades – getting the job done where and when needed most.

As an industry, ICAC offers constructive comment on nearly every major requirement that relies on either air pollution control or measurement technologies. These comments are part of the public record and we believe demonstrate our desire to provide constructive insight based largely on industry experience on how the capabilities and technological innovations of our industry can be utilized to comply with requirements, but also ensuring industrial progress is being served. Once requirements are in place, we are the industry that works with affected industries to meet both the timing and limits of the requirements. In the more than 40 years of the Clean Air Act, including 20 years operating under the Amendments of 1990, our industry has met the challenges of the requirements and our customers, and delivered solutions. For example in recent years, we have installed a substantial number of large scrubbers to the power sector, that require on average hundreds of workers employed over several years, thousands of tons of steel and concrete, and a continuous supply of reagents such as limestone to ensure sulfur dioxide emissions are reduced by as much as 99 percent. In addition to the direct and indirect jobs created by these projects, the return on investments is significant – as much as a 40 dollar return in health savings for every dollar spent.

A similar story exists for industrial sources that can be based on a formula that is rather simple – the Clean Air Act spurs investments which create jobs, improved health, and a modernized fleet. We are at a juncture when necessary upgrades are long overdue, and an experienced workforce is fully available to complete the effort. In addition, The U.S. Environmental Protection Agency recently finalized a rule for the industrial boiler sector that is significantly less stringent and at a lower cost than was proposed last year. This is something we need now to get America back on the job and protect public health.

The reality is that my industry works constructively to help other industries comply with regulatory requirements. The air pollution control industry is highly competitive, often offering not just many examples of one technology as a solution, but rather, a suite of

technologies that can be used to comply with requirements. ICAC recognizes that both healthy air and jobs result from installation and maintenance of air pollution and measurement technologies. We know the jobs are there and we have an entire mature industry as proof.

In closing, President Obama's Executive Order 13563 issued on January 18, 2011 characterized a regulatory system that "protects public health, welfare, safety and our environment while promoting economic growth, innovation, competitiveness and job creation." I hope that I have been clear that is a shared vision within my industry where for more than 50 years ICAC and its members have existed, prospered, innovated, and made a significant contribution to the health of the U.S. economy, and look forward to continued efforts that create real jobs, for real people, and real health benefits.

Mr. JORDAN. Thank you, Mr. Foerter.

If we all stick to our 5 minutes, I think we can all get a round of questions in before the joint session.

Mr. Kamnikar, you mentioned in your testimony many of your members of your association are small-business owners. In our previous full committee hearing, we had a number of small-business owners there. And one of our, I believe, freshman Members asked what I thought was just the most compelling question. They asked each of those small-business owners, if you knew then what you know now, would you have started? And it was amazing to me that every single witness that day said they would not have started their business if they knew then what they are faced with now on the regulatory front.

And so, tell me, was that an anomaly or would that be consistent with the members in your respective associations?

And we will start with Mr. Kamnikar.

Mr. KAMNIKAR. Yeah, I would say that is an accurate assessment. Most of our small member companies are family owned, third-, fourth-generation, so when the businesses got established, it was quite different than it is today.

Mr. JORDAN. Uh-huh.

Ms. Harman.

Ms. HARMAN. Many of our businesses, too, our small businesses. We also represent large businesses who have——

Mr. JORDAN. Sure. Sure.

Ms. HARMAN [continuing]. Been in business for over 100 years.

I think the most striking thing that they would tell you that is most difficult is that they begin a project or a proposal under one set of rules only to have those rules later changed.

Boiler MACT is an excellent example, where they invested millions of dollars to comply with the 2004 rule, and complied with that by the deadline of 2007, only to find now that they have to invest another $3 billion, you know, a mere few years later, 4 years later. It is not sustainable.

And they would tell you that it has a real impact on their capital decisions, whether to invest that capital here, invest it overseas, or not invest at all. And the not investing it at all is probably the biggest economic and environmental problem that we face today.

Mr. JORDAN. Before we go to Mr. Papadopoulos, let me—you made me think of a—we have this Web site, americanjobcreators, and we have several responses from our State. The ranking member and I have the privilege of representing folks in Ohio. And one comes to us from a gentleman from Mina, Ohio, close to Mr. Kucinich's district. He says, "A wise man once told me that the human mind can accept good news, can accommodate bad news, but can never get comfortable with uncertainty." And that is a huge impediment.

And I think in your testimony, Mr. Papadopoulos, you talked about Congress reclaiming its responsibility over this area. So talk to me a little bit more about the uncertainty; and the first question I asked, do your members in your association, would they echo what others have said that, if they knew then what they know now, they wouldn't have started their business?

Mr. PAPADOPOULOS. Congressman, first let me start by talking about myself, because over the last 20 years I have encouraged and sold to my own parent company to invest in the United States, and it has been $1 billion to $2 billion. And I find it very difficult today to make that argument, you know.

You know, I heard Mr. Foerter talk about win-win, but win-win for who? Win-win for the companies selling this equipment? Yes. This, you know, control equipment. Win-win for the environmental activists? What about a win-win for the companies that have to gain a return on investment? I don't see that in today's U.S. environment.

And it saddens me as an American citizen, more than anything else. I see other countries getting ahead of us, I see we have world-class companies here in the United States. We have the best environment here in the United States; we breathe the best air. And yet we are pushing our own world-class companies to the brink. You know, we are not going to be breathing our own air, we are going to be breathing other countries' air, the way we are going, without the jobs, without the investment.

That is, to me, the sad big picture. And I have difficulty convincing, in today's world, today's environment, why the United States is the best place to keep pouring money, with this regulatory, you know, situation.

Mr. JORDAN. Mr. Walls.

Mr. WALLS. Mr. Chairman, the member companies of the American Chemistry Council operate in a globally, very intensely competitive industry. It is that regulatory uncertainty that is the primary determinant in whether or not they are making investments here or elsewhere around the world.

I will just go back to my example on shale gas.

Mr. JORDAN. Shale gas, right.

Mr. WALLS. That, you know, again, is the type of game-changing development here that is going make us more competitive. We have folks in our industry saying that this development alone could put a whole new lease on life in this industry. We want to capitalize on that opportunity and reduce the uncertainties that are out there.

Mr. JORDAN. Great.

Mr. Schimmel, I apologize, you have 15 seconds because we have to stick to the 5 minutes so everyone gets in.

Mr. SCHIMMEL. I guess in answer to your question, Boral, of course, is internationally traded, and we have a responsibility to return shareholder value. And I would think that, were they to make additional acquisitions in the United States, they would have to think twice about the regulatory burden imposed by these rules.

Mr. JORDAN. Yeah.

I recognize the ranking member, Mr. Kucinich.

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

I was listening to Ms. Harman's testimony on how the industry has to consider the global competitive environment. And I had a visit a couple weeks ago from the Pulp and Paperworkers' Resource Council, and they provided me with a lot of information that would be interesting for this committee. And I am going to submit it. This is a chart here that shows the closed saw mills and paper mills,

1989 to 2003, most of them after 1993, I might mention; and also shows the closed saw mills and paper mills, 2004 to 2007.

And as I look at all these closures, it is pretty stunning. Then they showed me a map of how many have gone to other countries, notably China. OK?

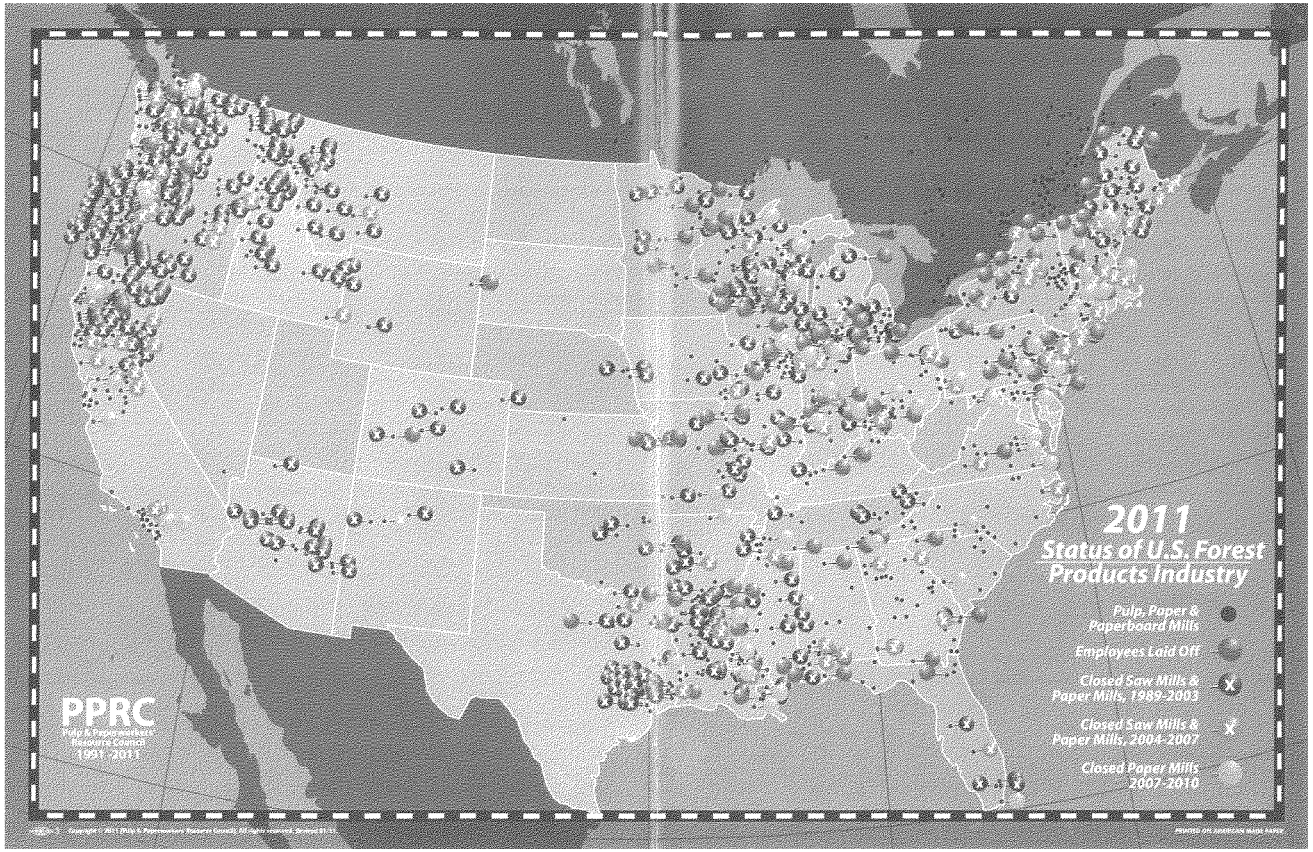
Now, it is a very interesting point here when I am listening to this discussion, because I think you are mentioning one part of the equation but it is only, frankly, a small part of the equation, because we are looking at trade agreements that were absent workers' rights—the right to organize, the right to collective bargaining, the right to strike, right to decent wages and benefits—human rights—prohibitions on child labor, slave labor, prison labor—and environmental quality principles, protection of air and water.

Those weren't in our trade agreements in NAFTA. And we look at the U.S. paper mill shutdowns; we see how many shutdowns occurred right after and NAFTA. And then after China trade, the shutdowns skyrocketed.

Now, I am going to submit this for the record because I think that——

Ms. BUERKLE [presiding]. No objection.

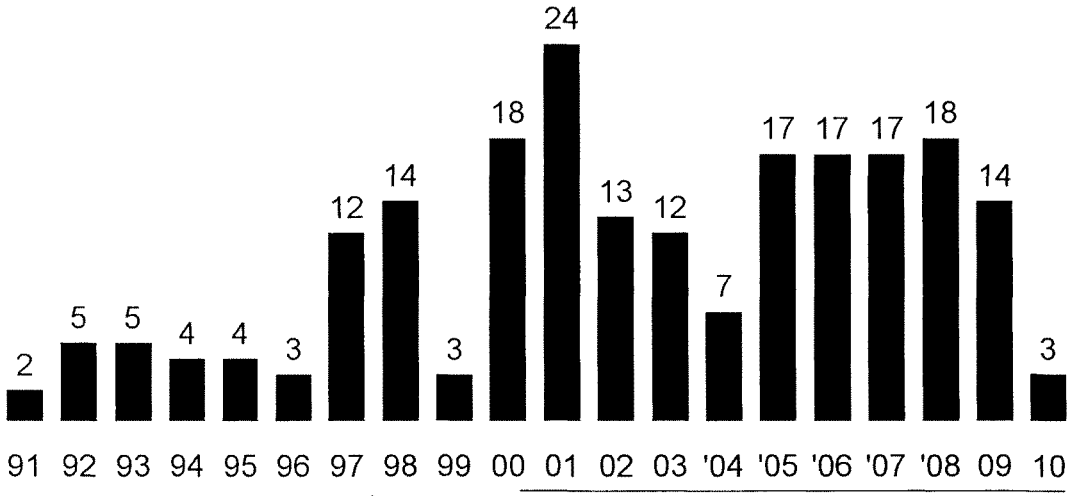
[The information referred to follows:]


2011
Status of U.S. Forest Products Industry
Pulp, Paper & Paperboard Mills
Employees Laid Off
Closed Saw Mills & Paper Mills, 1989-2003
Closed Saw Mills & Paper Mills, 2004-2007
Closed Paper Mills 2007-2010
PPRC
Pulp & Paperworkers' Resource Council
1991-2011

PPRC
Pulp & Paperworkers' Resource Council
1991 -2011
2011
Status of Worldwide Mills*
Existing Mills
-Pulp, Paper & Paperboard Mills
China*
[687 Mills]
USA
[Enlarged View On Other Side]
*As of March 2010
PRINTED ON AMERICAN MADE PAPER.

U.S. Paper Mill Shutdowns

CHINA TRADE



NAFTA

Source: American Forest & Paper Association

Mr. KUCINICH. Thank you.

I think that we have to consider the global competitive environment, and we certainly don't want our air quality standards or our labor standards to be reduced to a point where we become like countries that are less democratic. Because in order to have a political democracy, you have to have an economic democracy.

I also want to put into the record a news story out of the Guardian, U.K., which shows that China—China—this is last year—ordered a polluting and unsafe factory shut down, including, I might add, in China they shut down some of their older paper mills, 279 to be exact, because the Premier of China was concerned about making sure the energy efficiency of all of his industries could be increased. So China gets the connection now between upgrading and energy efficiency, and that it also means paying attention to the environment.

So, for the record.

Ms. BUERKLE. Without objection.

[The information referred to follows:]

guardian.co.uk

China orders polluting and unsafe factories to shut down

Environmental groups welcome Chinese order covering more than 2,000 sites in 18 industries

Tania Branigan in Beijing
guardian.co.uk, Monday 9 August 2010 19.27 BST

A larger | smaller

China's premier Wen Jiabao has said he will use an 'iron hand' to increase energy efficiency. Photograph: Feng Li/Getty Images

China has ordered more than 2,000 highly polluting, unsafe or energy inefficient plants to shut down within two months, state media reported today.

Environmental campaigners welcomed the measure, saying the announcement went well beyond previous orders in naming specific facilities and outlining stiff penalties for firms that do not comply by the end of September.

The notice from the ministry of industry and information technology covers 18 industries including steel, paper, cement and dyeing, according to Shanghai Securities News and other media. It includes companies across the country and will affect parts of the Aluminium Corporation of China, better known as Chalco, and Hebei Iron and Steel Group, the country's biggest steelmaker.

"There is no doubt this announcement is significant, especially because it is complete with real consequences; if they don't meet the target they will be barred from obtaining loans, for example," said Alex Wang, of the Natural Resources Defence Council.

Other penalties include having sewage treatment licences revoked or being refused business licences.

Beijing's target is to reduce energy intensity – the amount used to generate each unit of gross domestic product – by 20% from the 2005 level.

It improved by 14.4% in the first four years of the plan, putting it in touching distance of its pledge.

But in May premier Wen Jiabao said he would use an "iron hand" to increase energy efficiency after figures showed it had deteriorated by 3.6% in the first quarter. That probably reflected the effect of the economic recovery and a stimulus package that

included large amounts of spending on resource-hungry infrastructure.

Improvements in the second quarter smoothed out the effects of the drop, with efficiency falling by 0.09% over the first half of the year compared with the same period of 2009.

According to the World Bank, Chinese industries use 20% to 100% more energy per unit of output than their US, Japanese and other counterparts. The government is keen to improve efficiency in part because of the environmental impact but also because of its concerns about energy security.

"[This announcement] shows how these five year plan targets can really mobilise behaviour ... people's career prospects are riding on meeting them," added Wang. But he cautioned: "As with all things in China, what will be critical is how they implement this. To what extent have they been able to identify all the outdated equipment out there – have companies managed to hide some of it from the government?"

Yang Ailun of Greenpeace said: "The Chinese government have a 20% intensity target and were really struggling to implement it. Given that there's only half a year left, they really have to take more dramatic measures to meet it. The only kind of policies that can work within a very short time are shutdowns."

She added: "I think if they have actually announced it and named companies, for sure it's going to happen. In the longer term, to shut down the most energy inefficient facilities doesn't just make environmental sense but also economic sense."

She said the new document in part reflected the fact the government now had a clearer plan for achieving its target and better information, but also showed the difficulties of implementing central directives.

"It tells us that it is not enough sometimes for the government to say 'This is how much your province or company needs to achieve' ... [giving] very specific names of things they want to close down makes it easier for them to check whether implementation is there. It also encourages other parties, such as the public and environmental NGOs, to help check."

The list included 762 cement factories, 279 paper mills, 175 steel mills, 192 coking plants and an unspecified number of aluminum mills. Henan province in central China and Shaanxi in the north each have more than 200 of the "backward" facilities.

China has overtaken the United States as the world's biggest consumer of energy, the International Energy Agency reported last month.

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Mr. KUCINICH. Now, Mr. Foerter, I wanted to ask you, in your written testimony you state that each dollar spent on air pollution control technologies produces $40 in health savings. Can you explain how that occurs?

Mr. FOERTER. The types of pollutants that we are talking about in many cases are going to be sulfur dioxide, oxides of nitrogen. Sulfur dioxide is—we are looking at an acid rain program. That is the big pollutant in that group. The oxides of nitrogen, that is frozen and transported into ozone, which gets into the lungs.

The others are these hazardous air pollutants, which are a lot of metals that come from that. So even, I think, looking at the most recent industrial boiler MACT, those numbers come out to be very close to that $40.

Mr. KUCINICH. Well, you are telling us that EPA regulations actually create jobs and support industry. The figures I have seen from OMB, from the EPA, and from numerous private studies support your claims that environmental protections like the Clean Air Act have a positive impact on the economy.

In fact, a 2008 study from the Journal of Environmental Management entitled, "Environmental Protection, the Economy, and Jobs: A National and Regional Analysis," states that, "Contrary to general public perception and public policy understanding, since the late 1960's protection of the environment has grown rapidly, to become a major sales-generating, profit-making, job-creating industry."

Mr. Foerter, is that assessment consistent with what you have observed?

Mr. FOERTER. That is correct. The costs of controls are much less. In fact, when we actually do the implementation of the rules, they often are much less than they are even projected in the EPA rulemakings.

Mr. KUCINICH. Well, the authors of that 2008 study state that environmental protection, as an industry, generated $300 billion per year in sales in 2003, created 5 million jobs.

The authors went on to state, "Most of the 5 million jobs created are standard jobs for accountants, engineers, computer analysts, clerks, factory workers. And the classic environmental jobs—environmental engineers, ecologists, etc.—constitute only a small portion of the jobs created. Most of the persons employed in these jobs created may not even realize that they owe their livelihood to protecting the environment."

Mr. Foerter, that sounds good, and it sounds like good, well-paying, middle-class jobs. Are these the kind of jobs that you have seen created in the industry?

Mr. FOERTER. These are. And we are talking about companies that actually do the IT work, the financial investments. I mean, we do bidding on the projects, as well as going into the engineering design, which are some of the ones I talked about in my testimony.

Mr. KUCINICH. Thank you, sir.

Thank you.

Ms. BUERKLE. Thank you, Mr. Kucinich.

I guess I will yield myself 5 minutes.

Good morning to all of you, and welcome.

First, I want to thank Mr. Chairman for holding this particularly timely meeting.

As we make jobs and the economy a priority here in this Congress, what is becoming more and more apparent to us—and I am sure you all have recognized this for a long time—is the crushing regulations that you all face. And it makes doing business in this country extremely difficult. We would like to change that. Our chairman, Mr. Issa, has charged us with going out and finding out the ways that these regulations are standing in the way of success. And so that is what we are doing here this morning.

I think we can all agree that all of these regulations really represent a hidden tax on businesses and the cost of doing business. And I would like to get into the cost of compliance in a few minutes.

I think that we can agree, as was mentioned earlier, that the stimulus failed, because the government can't create jobs. And so, I want to thank all of you this morning for being the job creators in our country and for keeping our economy—you all are the ones that can get this economy back on track. So we need to work with you to figure out how we get the government out of your way.

I also want to comment that, not only have I heard from businesses throughout the hearings that we have conducted, you hear from not-for-profits, you hear from schools that the costs of these regulations don't even make sense, and it just impairs and impedes their success.

So I look forward to hearing from all of you this morning.

I guess I want to go back to my colleague Mr. Kucinich's comments about the costs and the cost-benefit. I think I would like to hear from all of you, if you wouldn't mind. Can you just tell me, in each of your industries, if you can give me a figure for the cost of compliance, the cost of regulations within your various industries?

Ms. Harman.

Ms. HARMAN. In multiple billions of dollars, between the capital costs plus the operating and maintenance costs that are ongoing. It is not just the cost of initially complying with the regulation; it is the day-in, day-out costs.

It is also the cost of projects that can't go forward because they can't make it through the regulatory red tape. A lot of these projects are energy efficiency improvement projects. Some of them are mill modernization projects. They are projects that will secure the future of the mill so that our mills can actually buy the technology that Mr. Foerter is talking about. But if those mills close, they can't buy that technology and they can't create those jobs.

Ms. BUERKLE. Thank you.

Mr. Papadopoulos.

Mr. PAPADOPOULOS. Let me just say, from the international experience I have, that today it costs in the United States in our industry twice as much to build capacity than it does, not in China—I am not using that as a role model—but even in the EU. We have gone to such an extreme in that count.

So, you know, I know we don't want to go back to where we were 30 years ago; that we know. But I think we have reached the point of diminishing returns. We have reached the point where we do

have a healthy environment. We do have a world-class industry. And we can't accept that. We want to just keep pushing ourselves when others need to catch up with us, because, as I mentioned before, you know, we are going to be breathing other people's emittants. It is not going to be our own.

Ms. BUERKLE. Thank you.

Mr. PAPADOPOULOS. And that is something that, you know, should occupy us.

Ms. BUERKLE. Mr. Walls.

Mr. WALLS. Our situation is similar to that of the forest and paper industry, not only in terms of the billions of dollars our industry spends in direct compliance costs, but we also experience a number of indirect costs as a result of those regulatory requirements.

One of those indirect costs, frankly, is in jobs. Our industry now employs about 780,000 Americans. That is down from a high of almost a million. In the mid-2000's, when natural gas prices spiked over a 5-year period, we lost 140,000 jobs. Year on year, between February 2010 to February 2011, we lost another 15,000 jobs. I am not saying that the regulations themselves are the sole cause of those jobs being lost, but they are one of the impacts we are seeing from the additional regulatory burden being proposed.

Boiler MACT is an excellent example. In the original proposal that came from EPA, they would establish emissions limitations that could not be met by the existing technology. If the technology isn't there to meet the emission limitations, what job is going to be created to create the equipment to then meet the standard?

Ms. BUERKLE. Thank you.

Mr. Kamnikar.

Mr. KAMNIKAR. I have made six trips to China and three trips to India in the last 5 years to benchmark against industries that we compete with. The point is—and Congressman Kucinich made a long list of achievements that all of us, across the table, have achieved in terms of safety and in the environment. And if we just put a moratorium on where we are today, it would take 20 years, if ever, for the industries in China and India to catch up.

Ms. BUERKLE. Thank you.

I apologize, Mr. Schimmel. We are out of time.

I yield back to the chairman.

Mr. JORDAN [presiding]. Well, we will recognize the ranking member.

Mr. CUMMINGS. Thank you very much.

I want to thank all of you for your outstanding testimony.

As I sat here, I could not help but think and go back to something that the chairman of the subcommittee said when he was talking about that we had some witnesses—and, Mr. Chairman, forgive me, it may have been another hearing that I was in. I think we are talking about the same hearing. And when people were asked, would they start their businesses again, there was one person—the reason why I remember this is because he was the one person who said, "You know what? Although I'm concerned about regulations, I would start my business again because I'm so honored to have the opportunities that I have to conduct a business in

the United States of America." I will never forget that as long as I live.

You know, as I hear the complaints and concerns, I am just—I guess maybe I come from a different world. You know, in Baltimore, if you look at the obituary page, you know, most people, as in most places, most people die from one or two things. The first thing I read in the morning is the obituary page. It is either cancer or heart disease.

And there are some communities in Baltimore, where I come from, a particular area called Fairfield, where the chemical industry had a lot of plants and they were pumping out all kinds of stuff years ago. And there came a point in time when they pretty much said that, after years and years of people living in that environment, said, you know, nobody should be living in this environment. And a lot of those people found themselves getting cancer and suffering greatly.

And I am not trying to paint these industries in a negative way. What I am trying to say is that we must always have balance. And I appreciate that each and every one of you, I think, each and every one of you talked about the fact that there is definitely—regulations are important for the safety, health, and welfare of our people. And so often I think we get confused, thinking that, on this side of the aisle, all we want is regulate, regulate, regulate. No, that is not what we are saying. We are saying that we want to get rid of regulations that make no sense. And I think all of you have made cases for some of those regulations that need to go. But, at the same time, we want to make sure that there is balance. When we get away from balance, then we have a problem in this Nation. When we get away from balance in our family decisions, we have problems. And that is the key.

And one of you—well, several of you talked about uncertainty. And, certainly, in the United States of America, in a democracy, you are going to have uncertainty no matter how you look at it. When you change administrations, you are going to have uncertainty. A lot of the regulations that you are talking about, that you are complaining about came under a Republican administration; some came under Democrat. Folks changed because that is part of the price that we pay in living in a democracy: uncertainty, changes of policy, and what have you.

And so, I think we have to—when we look at all of this, we have to ask the question—and I think Mr. Kucinich hit on it pretty hard. Somebody said a moment ago that it would take them 20 years—I think it was—who said that?—20 years to catch up with us. I think it was Mr. Kamnikar. Yeah, that is true, but we are better than that. This is America. This is the United States of America. We are better than that.

And I have seen over and over again, I think we can—when we don't have the balance that I am talking about, we can get caught up in a culture of mediocrity. And while we think we are ahead of the game, if we get caught up in that culture of mediocrity long enough we will be behind the game.

We want our people to have good health. We want people to be able to have safe jobs. I want your son, who may want to do like I did and have a tough job at Bethlehem Steel, to be able to go

there, and when he blows his nose, he doesn't blow out soot. I want that. I want that desperately.

At the same time, I want you all to make the money so that he can have a job. And so that is where the balance comes from. There is nobody—we want job-creating opportunities. We want you all to be successful. But, at the same time, we want to safeguard our citizens.

Unfortunately, there are a lot of people who don't even know the environments that they are walking into. And so we have to speak for them. If we don't speak for them, nobody else will. Somebody has to say, wait a minute, let's make sure that these regulations are fair.

And so, I think the President is right. I think he hit the right balance. I think there are Members on both sides of the aisle who have said the President has hit the right balance. Now what we have to do is we have to go through these regulations, we have to look at them carefully, make sure that industry is able to thrive and survive.

But let's keep one thing in mind: We are so fortunate to have companies operating in this country. It is an honor, as the gentleman said. I didn't say it; he said it. It is an honor to have the opportunity that we have here. And so, I don't want us to take that for granted.

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

Ms. BUERKLE [presiding]. Thank you——

Mr. CUMMINGS. I'm sorry—Madam Chairlady.

Ms. BUERKLE. Thank you.

I would like to now recognize the gentleman from Pennsylvania, Mr. Mike Kelly.

Mr. KELLY. Thank you, ma'am.

I am going to yield to Mr. Issa.

Mr. ISSA. I thank the gentleman. I am a little surprised.

I will be brief. And I apologize; we have two hearings of this committee going on, so I am going back and forth.

Mr. Kamnikar, I believe that when you were talking about the demands to the forging industry, in a sense, isn't the greatest demand, by far, the greatest challenge, simply the energy? I mean, when you get past capital costs, doesn't it really boil down to, no matter how effectively you use energy, if your competitors in other countries can get their energy source significantly less expensively, you will be outgunned in the international market? Isn't that true?

Mr. KAMNIKAR. It is quite clear. And regulating greenhouse gases in the way that has been outlined will effectively put many of our suppliers and many forgers out of business, because the energy, either electricity or the natural gas, will not—it will become cost-prohibitive throughout the supply chain.

Mr. ISSA. And, Mr. Foerter, now, I know there is a whole industry of green jobs and green energy and so on. But isn't it true today that, if you use green energy, let's just say all of it, by definition, on an unsubsidized basis, you are paying dramatically more for this energy? There is no, "alternative energy" industry that can provide, on an unsubsidized basis, competition with the base fuels of coal, oil, and natural gas? Isn't that true?

Mr. FOERTER. Well, I would be unqualified to talk about renewables, like solar and wind. But what we do is we clean up mostly the fossil fuels. So, basically, we keep coal operating, keep oil, natural gas, as it comes into the mix.

Mr. ISSA. Right. And even after you clean up coal, it is still in the neighborhood of 7 cents a kilowatt, dramatically less than any of the, if you will, new renewable fuels.

Mr. FOERTER. Yeah, we have actually seen, while these air pollution control requirements have gone in place for coal-fired utilities, the cost of electricity has actually gone down.

Mr. ISSA. So, for Mr. Schimmel, it is interesting that you are sort of involved in the brick-making business, because I was in Hanoi some time back and I got to observe how they make bricks. Now, they are totally supportive of Kyoto and all the other protocols. They take pure, just plain coal and they burn it, high-sulfur coal, and the tops of every leaf are black. Literally, you can see your way back 1,000 years into how you would make bricks.

When we look at the amount of BTUs you use, and, thus, the amount of carbon you put in, even if you were using a source fuel of coal, wouldn't it be true that you would probably use 1/20th the fuel that is used in an open-hearth-type brick production?

Mr. SCHIMMEL. I would say that is probably approximately correct. I have been to Malaysia and seen some of the slope kills that you probably are referencing, where they burn waste wood.

You know, traditionally, in the 1970's, the U.S. brick industry was around 4,000 BTUs a pound. Now we are down to about 1,200. And in Boral, at least, as well as some of our competitors, we use landfill gas, we use wood waste, natural gas, some coal.

But, yes, the industry, as a whole, has changed its technology substantially over the years. And periodic kilns, although there are a few of them still in existence, most of them are automated, computer-controlled tunnel kilns that are highly efficient.

Mr. ISSA. So, in a sense, every time an American operation shuts down and most overseas locations, particularly in the developing world, take their place, you are going to have a larger carbon footprint, rather than a smaller carbon footprint. Isn't that what the industry has found?

Mr. SCHIMMEL. I think that is traditionally true. Some of the European technology, of course, is probably on par with where we are. But, certainly, if we go to China and some of those other less energy-savvy countries——

Mr. ISSA. Well, you know, it is funny you mention Europe, because we will be going to France to visit the nuclear reprocessing facility that allows France to have all its entire base load coming from nuclear with zero emissions, because they are willing to use a source of fuel that costs less than 6 cents a kilowatt hour after all the costs of disposal. So, hopefully, that will be a lesson learned, is that we should copy the Europeans in at least one item—well, two if you count dark chocolate.

Ms. Harman, the general health of the forest industry in North America is considered to be good. But if you take Canada out, how good is it? How good is the ability to get the source material and to work with the pulp in the United States versus Canada versus most of your competitor countries?

Ms. HARMAN. Well, the U.S. forest-products industry is highly competitive. And we are competitive because we have made very difficult decisions, because we have right-sized our business. That means downsizing, unfortunately. EPA rules and regulations have been a contributing factor in that. Some of the high energy costs that affected the chemical industry have also affected us.

An interesting comment that you raised earlier about renewable energy, I would offer to you that the forest-products industry is one place where, on an unsubsidized basis, we can produce renewable energy as a byproduct of our manufacturing process. And we can do it very cost-effectively. And, in fact, it is a large portion of our energy, which is why the biomass rules in the boiler MACT regulation so negatively affect our industry.

Mr. ISSA. Well, thank you. And I commend you for that work. And I think we are all well-aware that you have been an industry in which nothing goes to waste.

I yield back.

Ms. BUERKLE. Thank you, Mr. Chairman.

I would like to now yield 4 minutes to Chairman Issa.

Mr. ISSA. Which I will yield to the gentleman from Pennsylvania. Thank you.

I owe you.

Mr. KELLY. Well, I am going to thank the gentleman from California for yielding back. And, Madam Chairman, thank you, as we continue to do things the proper way.

First of all, I want to thank all of you from being here. I come from the private industry also. And there is an old adage that is out there, and it goes something like this: "Don't worry about the mule. Just load the wagon." And I think we are at a point where the mule is about ready to walk away from the harness himself.

And it is really great that we are concerned about clean air and we are concerned about clean water and we are concerned about the health of our workers—and I would suggest this: That is not just one party's concern. All of us are concerned about that. It is the cumulative effect of all these regulations that keep building and building and building to where it is going to break.

Now, I am somewhat of an athlete, not a great one, but one sport that always interested me was golf. And what interested me about golf is a guy like me, who is a lousy golfer, can beat a guy who is really good. It is called a handicap.

Now, we have continued to handicap you—and now I am part of this government—to handicap you and handicap you and handicap you. So I think you are about ready to walk away from the harness.

But, in particular—first of all, Mr. Kamnikar, thanks for being here. In the district, you know, we have so many people in the business, and I want to congratulate you on becoming the president of the organization.

But the effect of these cumulative regulations, if you could just walk us through. Because a lot of us have never signed the front half of a check and have absolutely no idea of the unintended consequences of all these costs, if you could, just kind of walk us through, for an example, something like ITAR and how difficult it makes it for somebody who makes roll bearings to go through that type of regulation, and the cost involved.

Because, at the end of the day, it is the cost that concerns me, and our ability to compete in the global market. We have handicapped ourselves to the point where we are forfeiting the ability to compete.

If you could, sir.

Ms. BUERKLE. Excuse me. If I could just interrupt. The House rules are requiring that we adjourn this meeting. However, if you would like to take 30 seconds to answer Mr. Kelly's question, and then we will adjourn.

Mr. KAMNIKAR. It is difficult to answer. I would simply say this, and I think this is true of everybody on the panel. We have done a lot to get to where we are today, and the uncertainty, the possibility of further regulation is what we are most concerned about.

And I go back to my point about competing with the Chinese and Indians. It will take them a very long to get where we are today, but while they continue to operate, they have a very big advantage over us. We will take our chances against them, but let's not regulate us even more.

Ms. BUERKLE. Thank you.

Again, I apologize for the time constraints this morning. I would like to thank all of our guests here for taking time out of your busy schedules to appear before us, give us your testimony.

The meeting will stand adjourned.

Thank you so much.

[Whereupon, at 11:57 a.m., the subcommittee was adjourned.]

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