

TANGLED IN RED TAPE: NEW CHALLENGES FOR SMALL MANUFACTURERS

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS

UNITED STATES

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

HEARING HELD
MARCH 18, 2015



Small Business Committee Document Number 114-006
Available via the GPO Website: www.fdsys.gov

U.S. GOVERNMENT PUBLISHING OFFICE

93-732

WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Publishing Office
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CONTENTS

OPENING STATEMENTS

	Page
Hon. Steve Chabot	1
Hon. Nydia Velázquez	2

WITNESSES

Ms. Cynthia Reichard, Executive Vice President, Arylessence, Inc., Marietta, GA, testifying on behalf of the International Fragrance Association of North America	5
Ms. Janis Herschkowitz, President & CEO, PRL, Inc., Cornwall, PA, testifying on behalf of the American Foundry Society	6
Mr. Viktor Anderson, P.E., Director of Engineering, Structural Concepts, Muskegon, MI, testifying on behalf of the Air-Conditioning, Heating and Refrigeration Institute	8
Mr. James Goodwin, Senior Policy Analyst, The Center for Progressive Reform, The Center for Progressive Reform, Washington, DC	10

APPENDIX

Prepared Statements:	
Ms. Cynthia Reichard, Executive Vice President, Arylessence, Inc., Marietta, GA, testifying on behalf of the International Fragrance Association of North America	29
Ms. Janis Herschkowitz, President & CEO, PRL, Inc., Cornwall, PA, testifying on behalf of the American Foundry Society	36
Mr. Viktor Anderson, P.E., Director of Engineering, Structural Concepts, Muskegon, MI, testifying on behalf of the Air-Conditioning, Heating and Refrigeration Institute	51
Mr. James Goodwin, Senior Policy Analyst, The Center for Progressive Reform, Washington, DC	56
Questions for the Record:	
None.	
Answers for the Record:	
None.	
Additional Material for the Record:	
None.	

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WEDNESDAY, MARCH 18, 2015

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,

Washington, DC.

The Committee met, pursuant to call, at 11:00 a.m., in Room 2360, Rayburn House Office Building. Hon. Steve Chabot [chairman of the Committee] presiding.

Present: Representatives Chabot, Huelskamp, Hardy, Radewagen, Velázquez, Huizenga, Adams and Lawrence.

Chairman CHABOT. Good morning. The hearing will come to order.

Over the next hour or so, we are going to talk about federal regulations and our small manufacturers. Regulations are not just words on paper; they impact the way millions of Americans try to earn a living every day. We have always been a nation of makers and builders. That is why American manufacturers, including, and especially small manufacturers, are critically important to the American economy. The term “Made in the USA” is a source of pride for so many people. It is a reminder that if we want, we can build our own future. These days, unfortunately, a lot of people feel they cannot build their own future. It is not for lack of ideas; it is oftentimes because of the burden of federal regulations. I look forward to hearings like this one because it gives us the chance to hear from real people about the real life impact of regulations.

In a survey by the National Association of Manufacturers last year, 88 percent of manufacturers said federal regulations were a significant challenge. When the National Federation of Independent Business (NFIB) surveyed its members, they overwhelmingly responded that “government requirements and red tape are the biggest problems they face.” These are regulations that came out of the Federal Government in the last month alone. February. The shortest month of the year. How can we expect our small businesses to focus on creating jobs and bringing new ideas to life when odds are something in these pages will have a substantially negative impact on them? And even worse, they likely had no input at all in what these regulations say.

Let me say at the outset, I am not against all federal regulations. I am against dumb federal regulations. That is, for example, why I hope the Senate will soon take up the Small Business Regulatory Flexibility Improvements Act. We passed that bill in the House recently to bring our regulatory system into the 21st century and stop putting small businesses at a competitive disadvantage. The

regulatory burdens currently fall most heavily on small businesses, particularly manufacturers like those who are with us today because they have to pay for compliance costs just like their larger competitors but with only a fraction of the resources. The Small Business Regulatory Flexibility Improvements Act would give small businesses the input in the regulatory process they should have had all along. That input cannot come soon enough.

One of the best things about being a member of Congress is that we get to see many perspectives. We talk to small business owners and employees like our witnesses today and we get to see how other countries approach their regulatory process. While many of our international economic competitors are making way for innovative cutting-edge reforms, the United States has changed little about the way it regulates since the 1980s. If we want to remain a global economic leader, we have to modernize. We have to make the small businesses that provide livelihoods for about half of all American families a part of the solution, not the biggest loser in an economy that desperately needs them to succeed.

Ms. Reichard, Ms. Herschkowitz, and Mr. Anderson, thank you for taking what I know is very valuable time away from your workplaces today to share your stories with us, and Mr. Goodwin, I look forward to hearing your thoughts on the difficulties your fellow witnesses face.

With that, I yield to the ranking member, Ms. Velázquez.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. And welcome to all the witnesses.

Recent economic data makes clear that small businesses continue to be a driving force in our economy. Small firms added 191,000 workers to their payrolls in the first two months of this year. We must continue fostering this type of growth. The regulatory process is important to our nation's small businesses in many ways. How regulations are formulated and approved can affect entrepreneurs' bottom lines very directly. This is especially true in the manufacturing sector, which is the focus of many worker protection, environmental, and energy regulations authorized by Congress. Did you hear me well? Those regulations are authorized by Congress. It is not a cabinet member who is sitting there and out of the air decides to enact regulation. We, members of Congress, we pass legislation, and that is the basis of those regulations.

In that regard, this committee has taken an active role in ensuring more companies' needs are taken into account during the federal rulemaking process. I think it would be safe to say that in some instances, agencies have endeavored to examine how new regulations impact small firms. Unfortunately, in other cases, agencies have sidestepped their statutory responsibility to weigh how new rules will impact small entities and consider policy alternatives that might prevent economic harm. It is important we continue our work to ensure agencies pay close attention to small companies' needs. Lacking the economies of scale enjoyed by the larger competitors, small businesses often face higher compliance costs. Overall, when it comes to the regulatory environment, the challenge is balancing the benefits of important worker protections, environmental safeguards, and consumer safety measures against economic consequences. Too often, this debate is framed in a strictly

either/or context, meaning we must choose between harming small businesses and preserving important protections that keep workers and consumers safe. Instead of taking that tact, it seems a better option is focusing on regulating in a thoughtful manner that is sensitive to the burden imposed on small companies.

The regulatory review process that Congress and the president have updated is meant to achieve that goal, taking small firms' needs into account. In that regard, it is my hope we can learn more about how mechanisms, like regulatory flexibility and the Small Business Regulatory Enforcement Act are minimizing the regulatory impact on small companies. Likewise, there may be other ways that federal agencies can lessen small business compliance costs. Whether it is through technical assistance, legal advice or other steps, I would hope this sort of proactive thinking can also be part of the discussion.

All of us share the goals of protecting workers, preserving our environment, and keeping consumers safe. Additionally, none of us want these protections to hurt small companies or impede job growth, and by working together, I think we can achieve both goals.

With that, I yield back the balance of my time and again, I welcome all the witnesses, and I thank you for being here.

Chairman CHABOT. Thank you very much.

If Committee members have an opening statement prepared, I would ask that they be submitted for the record.

And I will take just a moment to refer to our timing and lighting system here. Each witness gets five minutes, as I am sure you know. The green light will be on for four minutes. The yellow light will come on to let you know you have got a minute to kind of wrap up. The red light will come on and we would ask you to wrap up your testimony as close to that time as possible. We will give you a little bit of flexibility but not a whole lot.

And I would now like to introduce our panel, or at least portions of it, and a couple other members will also introduce other members.

Our first witness is Cynthia Reichard. She is executive vice president of Arylessence. I want to make sure I pronounce it. Arylessence. And it is a flavor and fragrance company in Marietta, Georgia. Arylessence was founded by Ms. Reichard's uncle in 1977, and it is a family-owned and operated small business. She leads the company's teams of perfumers, evaluators, and marketing experts to develop innovative ideas for signature fragrances. Ms. Reichard is actively involved in several industry trade associations and is testifying on behalf of the International Fragrance Association of North America, and we welcome you here this morning.

Our next witness will be Janis Herschkowitz. She is the president and CEO of PRL, Inc., in Lebanon County, Pennsylvania. PRL makes and supplies high quality metal castings for the defense, nuclear, and petrochemical industries. PRL was founded in 1972, when Ms. Herschkowitz's father purchased a small company with 13 employees. She became the president of PRL in 1989. Ms. Herschkowitz is testifying on behalf of the American Foundry Society, and we thank you for being here today as well.

I would now like to turn to my colleague from Michigan, Mr. Huizenga, to introduce our next witness. I do that all the time, and I apologize.

Mr. HUIZENGA. That is all right, Mr. Chairman. Well, we know that everybody from Ohio has got a thing against Michigan anyway. We will see what happens in the tournament here.

Well, I do deeply appreciate the opportunity to come here and be here with this Committee today, and I appreciate you holding this important hearing. Additionally, I appreciate you allowing me to introduce my friend, Viktor Anderson, who is an engineer with a company called Structural Concepts, which is located in Norton Shores, Muskegon area, in my district, along Lake Michigan.

Structural Concepts is an innovative manufacturer that has been operating for 43 years. I have had a number of chances, opportunities to go in and meet with them and kind of keep apprised of what is going on. And Structural Concepts is a market leader in energy-efficient, temperature-controlled food cases for florists, supermarkets, and food service retailers. Little companies you may have heard of, like one from Seattle called Starbucks, they are main suppliers for them. They have developed the industry's most energy-efficient and lowest life-cycle cost refrigerated food display cases, and I know that we have all seen and experienced and interacted with their products or the products of someone like them.

And because of newly proposed regulations, actually, not legislation implemented by Congress or passed by Congress, but in fact, regulations proposed and developed by EPA and the DOE, which are in conflict with each other, Structural Concepts' ability to produce their most self-contained equipment is in jeopardy.

I look forward to having Viktor and the other witnesses share more about the challenges facing small businesses as they are holding Washington, D.C. bureaucrats accountable so employers like Structural Concepts and the others can grow, thrive, and create jobs in communities across this country. So again, Mr. Chairman, I appreciate the opportunity to be here with you, and Viktor, welcome.

Chairman CHABOT. Thank you very much.

Now I will yield to the ranking member so she can introduce our next witness.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

I present to the committee Mr. James Goodwin. He is a senior policy analyst for the Center for Progressive Reform where he provides counsel on regulatory matters with a focus on environmental and energy policy. Prior to joining the center in 2008, he worked at the Environmental Law Institute. He is a published author with articles on environmental law and policy, appearing in the Michigan Journal of Public Affairs and the New England Law Review. He graduated Magnum Cum Laude from the University of Maryland School of Law, and also the University of Maryland School of Public Policy where he graduated as valedictorian.

Welcome, and thank you for being here today.

Chairman CHABOT. Thank you very much for that introduction.

And we will now go to our witnesses and we will begin with you, Ms. Reichard, and you are recognized for five minutes.

STATEMENTS OF CYNTHIA REICHARD, EXECUTIVE VICE PRESIDENT, ARYLESSENCE, INC.; JANIS HERSCHKOWITZ, PRESIDENT & CEO, PRL, INC.; VIKTOR ANDERSON, P.E. DIRECTOR OF ENGINEERING, STRUCTURAL CONCEPTS; JAMES GOODWIN, SENIOR POLICY ANALYST, THE CENTER FOR PROGRESSIVE REFORM

STATEMENT OF CYNTHIA REICHARD

Ms. REICHARD. Thank you. Good morning. My thanks to Chairman Chabot, Ranking Member Velázquez, and the members of the Small Business Committee for inviting me to testify.

My name is Cynthia Reichard. I am the executive vice president of Arylessence, and we are a Georgia-based manufacturer that works in partnership with consumer product companies to develop fragrances that transform products into winning brands and consumers into passionate fans.

I can unequivocally state that Arylessence is hindered by increasing regulatory burdens. Today, I will focus on one in particular administered by OSHA. I am proud to say that we are a family-owned and operated small business. As you said, my uncle founded Arylessence in 1997. He had a dream. He borrowed against everything he owned and opened with three employees. We now have 120, supplying 1,000 manufacturers in the U.S. and abroad. We care deeply about our employees. We train and promote from within. We provide excellent benefits, tuition reimbursement, and offer onsite educational and fitness programs.

I am also proud to speak for the International Fragrance Association North America (IFANA), which represents the fragrance supplier industry in the U.S. Like all IFANA members, Arylessence sources ingredients from around the globe and crafts unique formulations incorporated into everything from perfumes and lotions to candles and cleaning products. In the U.S., IFANA's members market more than 90 percent of all scents, and support more than 240,000 American small businesses.

Creating a fragrance is a marriage of art and science. We work with thousands of ingredients, like natural essential oils, such as lavender and rose, and manmade ingredients developed from sustainable raw materials. We, and our clients, face extensive regulations across agencies, including EPA, OSHA, FDA, DEA, DOT, and FAA. Plus, all of the state and local regulations. We have the equivalent of six full-time employees who are dedicated solely to regulatory compliance. Ever-increasing burdens raise the cost of doing business in the U.S., limiting reimbursement in our company and our employees. In 2008, we planed to expand by building a large R&D facility and hiring 50 more. Due to the economy, the effect of increased taxes and costly compliance with regulations, we have delayed many of these plans.

Today, I want to share our experiences in complying with OSHA's hazard communications standard, OSHA's interpretation of the globally-harmonized system for classification and labeling of chemicals or GHS. It began as a U.N. harmonization initiative billed as a cost-saving device that would provide consistency and ensure workers clearly understand the materials they are in con-

tact with. In 2011, the Obama administration estimated it would realize 585 million in annualized savings for employers.

In truth, GHS is the opposite. It is neither global, nor harmonized. And it has taken us three years to implement and cost us over half a million hard dollars in untold labor hours, all without safety benefits to employees.

Complying is complex and requires extensive operational changes. Manufacturers and distributors must identify and classify chemicals based on a complicated GHS hierarchy. All of this information must be included on safety data sheets (SDS) and labels which must be affixed to workplace products. Labels must include color pictograms, and informational symbols, and signal words, and lengthy hazard statements.

OSHA's different treatment of samples is problematic for industry. Canada and the EU allowed for small package exemptions. Despite pleas from manufacturers, OSHA did not, resulting in a costly and incredibly burdensome process.

When asked to create a rose sence—I think, Arylessence typically sends two to five samples to a potential client, all containing different ingredients. Unlike industries that ship in large sample quantities, ours sends extremely small half-ounce bottles. Now, rather than requiring a SDS only on products purchased, each small sample must include the complex labeling and safety data communications. Arylessence sends 10,000 samples per year, requiring thousands of safety data sheets and labels for half-ounce samples that may never be sold.

In addition, OSHA has issued no guidance as to how labels are to be affixed to small packaging. Without this label attached to this bottle, we are going to be subjected to severe OSHA fines. This is just one example of how small businesses like ours continue to struggle due to the increasing costs of unnecessary regulations. Regulation without representation needs to be replaced with clear understanding of the impacts and proactive solutions that do not unfairly disadvantage small firms.

Thank you for the opportunity to testify.

Chairman CHABOT. Thank you very much.

Ms. Herschkowitz, you are recognized for five minutes.

STATEMENT OF JANIS HERSCHKOWITZ

Ms. HERSCHKOWITZ. Thank you, Chairman Chabot, Ranking Member Velázquez, and members of the Committee. Thank you for the opportunity to testify before you to discuss regulatory burdens impacting the U.S. metal casting industry.

I am Jan Herschkowitz, president of PRL, Inc., which is a holding company of a foundry and upgrading facility and two machine shops. My family moved to the States from Bolivia in 1971 to live the American dream. In 1972, my father purchased a small company with 13 employees, which he quickly expanded. After leaving Zenith Electronics, I became president following his death in 1989. PRL currently has four manufacturing locations and is a proud supplier of high specification castings for the military, nuclear, and energy sectors. Our foundry, which is our smallest company, only has 13 employees. I am very proud of our highly-skilled workforce who play a critical role in our nation's defense and their dedication

to quality is reflected in our customer base which includes Northrop Grumman, Curtis Wright, and PSE&G. I am testifying before you today as upcoming proposed regulations, although well intended, are so threatening that I fear it may jeopardize the future of the U.S. foundry industry.

I am here on behalf of the American Foundry Society, our industry's trade association, comprised of more than 7,500 members, over 80 percent of U.S. metal casters and small businesses employing 100 workers or less. Again, over 80 percent of foundries employ 100 workers or less, with Ohio having the most foundries in the country. Over 90 percent of all manufactured goods and capital equipment are in some way dependent on castings. Our military utilizes metal castings in all sectors, including submarines, tanks, and other components, making the need for domestic production vital for our national defense.

Metal casters are the world's original recyclers as we make new castings by remelting scrap metal and recycling the majority of the sand that we use. AFS members are highly committed to protecting their employees and implementing sound safety policies. PRL's culture is one of safety first as the risks of pouring molten metal are taken very seriously by every coworker, and we continually invest in safety equipment, consultants, and training.

I will only discuss a few regulations that will impact us as my submitted testimony reviews the regulations in detail. Our biggest concern is OSHA's proposed crystalline silica rule, which would create a massive and complicated new regulatory structure for the control of silica. Under this "one size fits all" rule, it would ban dry sweeping and compressed air usage. Like all foundries, we manually clean out all of our mold using a small compressed air hose and we use dry vacs to keep our foundry clean. This is standard practice. Under this proposal, we would no longer be allowed to use dry sweeping and our only alternative would be to use wet vacuuming. As a foundry person, you know you never, ever want to introduce water into a foundry environment as an explosion could occur and lives would be at stake, yet this regulation requires it. It dismisses the use of personal protective equipment as a primary approach to protecting employees. Many employers have invested in clean air respirators, which are utilized where there is a substantial increased risk of silica exposure. Unfortunately, OSHA's proposal measures the air outside of the respirator, which is not indicative of what the coworker is inhaling.

Expected cost of compliance for just the dust collection systems required are estimated at million dollars. This does not even include the cost of engineering time; obtaining new permits, which may not even be granted; administrative costs; and new ventilation and cleaning systems. Under this regulation, there is also no guarantee that the lower standard can be met, and there is uncertainty that it can even be properly measured. The estimated cost of this regulation by OSHA for the foundry industry is 43 million, while outside analysts estimate the cost to be over 2.2 billion annually. Obviously, the impact on small business was not properly taken into account.

Foundries are also concerned with new regulations that the EPA is imposing on utilities. In order to compete in a global market-

place, U.S. foundries need adequate and affordable electric power. EPA has proposed two regulations to limit carbon emissions on new and existing power plants and have proposed an ozone regulation that could be the most expensive rule ever imposed. Our concern is that these costly regulations will hit foundries the hardest, increasing our energy costs and driving us offshore. We would like to see the OMB and other federal agencies also take into account the cumulative impact of all the regulations.

In closing, keep in mind that the United States has the cleanest, safest, and most efficient foundries in the world. Adding more regulations which may not be verifiable and perhaps cost prohibitive will force some of our foundries to shut down and products will be taken offshore. This will have the unintended consequences of increasing world pollution, rewarding countries with unsafe work practices at the expense of diminishing our country's own economic growth and putting our national defense at stake.

Thank you again for this opportunity, and I would gladly answer any questions.

Chairman CHABOT. Thank you very much.

Mr. Anderson, you are recognized for five minutes.

STATEMENT OF VIKTOR ANDERSON

Mr. ANDERSON. Thank you, Congressman Huizenga for that kind introduction, and thank you, Chairman Chabot, Ranking Member Velázquez, and members of this Committee. I appreciate the opportunity to testify today on behalf of Structural Concepts Corporation and the HRI.

Structural Concepts was founded in 1972 and is located in Muskegon, Michigan. We manufacture commercial refrigerated equipment. Basically, we make the refrigerated merchandiser or display that you would find at your local grocery store or restaurant. Our products ensure that food is stored safely and is accessible in all corners of our country, from mom and pop shops to the largest supermarket chains.

Like so many small businesses across the country, Structural Concepts is deeply rooted in our community. Our friends, our neighbors, and our town depend on jobs we provide. Unfortunately, small businesses like ours are facing significant new regulatory burdens from federal agencies, and that is why I am here today.

First, it is important for me to tell you that my company is not anti-regulation. Like many of our fellow HRI members, we consider ourselves to be concerned citizens, responsible neighbors, and leading innovators. We have complied fully with previous regulations, and even exceeded our obligations. What I am here to talk about, however, is the burden of conflicting regulations on businesses like mine and the need for regulatory certainty. President Obama talked about this burden in Executive Order 13563 when he required federal agencies to tailor regulations to impose the least burden on society, taking into account among other things the cost of cumulative regulations. My hope is that this hearing can help illuminate the need for federal agencies to live up to this obligation.

In 2009, DOE finalized energy efficiency standards for commercial refrigeration equipment. Our industry was required to come

into compliance in 2012. Over those three years, we developed energy-efficient solutions, engineered them into 400-plus refrigerated display cases, and tested them for energy consumption while still upholding our most important regulations pertaining to food and product safety. To accomplish all this, we had to dedicate thousands of engineering and testing hours that would otherwise be used for customization or developing products to increase sales and grow our company. We had to increase our capacity, accuracy, and throughput of our test labs. We had to develop new manufacturing processes and supply chains to produce our own condenser units. In the end, we reduced the carbon footprint of our entire self-contained product offering by approximately 50 percent. We felt proud of this fact that we complied with the new DOE energy levels, and in most cases, went above and beyond.

Unfortunately, we soon found out that was not enough. Last year, only two years after the compliance deadline for the old rules, DOE again updated its standard with more stringent energy efficiency criteria. The new standards, which have to be met by 2017, obviate many of the investments that were made to comply with the 2012 rule. Quite simply, after making huge investments based on regulatory reality, DOE moved the goalposts.

To make matters worse, the EPA proposed a rule last year that will take away the current refrigerant used in all of our self-contained refrigerated systems on January 1, 2016. That is only nine months away. The alternative refrigerants EPA proposed were either too flammable and limited the amount of refrigerant we could use in each system, or they increased the energy consumption in our application. If finalized, EPA's proposal would have significantly raised energy consumption of all of our products and violated the new DOE energy regulations.

After we submitted comments to the EPA, the agencies offered up alternative refrigerant we could use, our 450A. Although this is much better than the previous alternatives, it still has its challenges. Production of the new refrigerant and regulatory approval of compressors can take years to implement. All of our systems will again need to be redesigned and tested to see how the new refrigerant impacts energy efficiency.

Here is our primary problem. DOE is requiring us to comply with new energy standards on January 1, 2017. EPA is proposing compliance with their new rule on January 1, 2016. While it is possible the EPA's compliance date will slip, DOE is mandated to review energy levels every five years. This means that in 2022, we may have to review our product yet again.

My point is this. If DOE and EPA do not coordinate their efforts, we could potentially be redesigning our product every two to three years for 12 or more years in a row at great expense. Combining the compliance burdens associated with these two rules could devastate our industry.

My purpose today is to draw the Committee's attention to the regulatory burdens faced by small businesses everywhere. The regulations I just described both specifically designed to address the commercial refrigeration industry will not only increase our costs but will force Structural Concepts to reduce the number of products manufactured, throw uncertainty into the current and future prod-

ucts offered, and overall result in reduced employment. We are not a large corporation with a plethora of resources to redirect towards the review, testing, and compliance of new rules. We are a small, innovative manufacturer that makes refrigerated display cases, hardly the nexus point of the nation's energy and environmental policy battles.

Our company and thousands of companies like ours across the nation make a big difference in the stability of the economic recovery which has only just begun to take hold. Again, we are not anti-regulation. We are simply asking federal agencies to consider the impacts of cumulative regulations on businesses like ours and live up to the guidelines articulated in President Obama's executive order.

Thank you very much for the opportunity to be here today, and I look forward to answering questions.

Chairman CHABOT. Thank you very much.

Mr. Goodwin, you are recognized for five minutes.

STATEMENT OF JAMES GOODWIN

Mr. GOODWIN. Thank you.

Mr. Chairman, Ranking Member Velázquez, and members of this Committee, I appreciate the opportunity to testify today on why ensuring a robust regulatory system is both necessary to and consistent with a strong economy in which smaller manufacturers can thrive and prosper.

In my testimony today I will make three points. One, regulations are essential for safeguarding the public. Two, regulations can and do provide important economic benefits for smaller businesses, including those in the manufacturing sector. And three, the SBA Office of Advocacy appears to be working against the interests of smaller businesses and requires enhanced oversight from this Committee.

Based on these three points, I will conclude by proposing an alternative approach to balancing strong public safeguards with the unique interests of real smaller businesses.

Point one. Over the past four decades, U.S. regulatory agencies have achieved remarkable success in establishing safeguards that protect people and the environment against unacceptable risks, but serious hazards remain. By addressing these hazards, Americans would be even better protected.

A case in point is OSHA's pending rule to protect workers against harmful silica exposures. Roughly two million U.S. workers toil in workplaces with silica levels high enough to threaten their health. OSHA estimates that thousands of workers die every year because of silica exposures that are within the current legal limits which were set more than 40 years ago. These workers suffer just the same whether they work for smaller businesses or larger ones. Once in place, OSHA's pending silica rule is expected to save up to 700 lives and prevent up to 1,600 cases of a deadly lung disease called silicosis every year. And these protections cannot come a moment too soon.

This rulemaking has been in the works for over 18 years now, and the cost of these unnecessary delays has been thousands of

deaths and debilitating illnesses that were not prevented but should have been.

Point two. The economic benefits of regulation of businesses can be significant but are all too often overlooked. Here are just four types of these benefits. First and foremost, smaller businesses receive a significant productivity dividend when their workers and their workers' families are healthy and safe. Second, regulations can help to create new markets and opportunities for entrepreneurs. Third, regulations can even spur businesses to revolutionize their production processes in ways that lead to greater productivity and profitability. In my written testimony, I discuss in detail how OSHA's 1978 cotton dust rule has precisely this kind of effect. Fourth, as recent episodes illustrate, when industrial-scale catastrophe results from a failure to regulate adequately, the attendant costs tend to fall disproportionately on smaller businesses.

Here I can speak from personal experience. My uncle in Alabama has struggled to keep the doors open to our family's decades-old restaurant supply company after the 2010 BP oil spill as the resulting downturn in tourism has obliterated much of the company's customer base. Stronger regulations that are necessary for preventing these catastrophes or for minimizing their harmful effects with us deliver particularly large benefits to many small businesses like his that might otherwise be caught in harm's way.

Point three. In a recent GAO report, the GAO raised serious concerns about the Office of Advocacy's job performance. Among other things, the report describes how the GAO could find no evidence that the Office of Advocacy ever interacts with smaller businesses in the course of conducting its duties, such as developing comment letters on pending rulemakings. Yet, investigative work by my organization and by the Center for Effective Government has found copious evidence of communications between the Office of Advocacy staff and large trade associations that are dominated by their large business members. The bottom line is that smaller businesses continue to lack a voice in government, while the larger businesses they compete against have their already large voice amplified on the taxpayers' dime.

In the brief time I have remaining, I would like to make a modest plea that we hit the target on this ongoing regulatory debate so that we can chart a new path forward. Moving forward means finding ways to help smaller businesses meet the regulatory obligations and to do so in ways that will not undermine their ability to compete with larger firms in their industry.

Over the years, Congress has taken some small steps towards enhanced compliance assistance for smaller businesses. With some creative thinking, these efforts can and should be expanded. I will highlight just a few potential creative solutions here. First, providing monetary assistance in the form of grants or subsidized loans to truly small businesses so they can be at higher regulatory standards. Second, expanding existing regulatory compliance assistance programs. And third, partnering small businesses to promote beneficial synergies on regulatory compliance.

Thank you. I would be pleased to answer any questions that you might have.

Chairman CHABOT. Thank you very much. I appreciate your testimony. I appreciate the testimony of all the witnesses, and Ms. Reichard, I will go to you first, if that would be okay.

You mentioned in your testimony about Canada and the European Union providing an exemption for labeling for small bottles while OSHA did not. How does this put the United States manufacturers like yourself at an economic disadvantage when you are trying to compete in international markets?

Ms. REICHARD. Okay. From an economic disadvantage standpoint, our competitors do not have to also provide the same labeling. The process of producing that labeling for us means that we have had to buy new printers that are very expensive. We have had to make all that investment. We have to take the labor cost to produce all of those labels. And because OSHA gave no guidance, we have had to figure out a way to properly attach those labels to our product. And I can show you for us what that looks like. We have had to take our bottle, produce our printed material—in color now—and have the labor to fold it into four squares so that it fits into this chemically impervious pouch and attach it, each one, 10,000 of those products per year, and our competitors do not have to do so.

Chairman CHABOT. Thank you.

Ms. REICHARD. It is a complete disadvantage for us.

Chairman CHABOT. Thank you very much.

Ms. Herschkowitz, let me return to you. You talked about the silica rule. If that rule were finalized—you mentioned about the significant cost to you and the fact that it is arguable whether safety would be improved; in fact, in many instances, it might be just the opposite effect. If that rule went into effect, how would that impact your ability to grow, create more jobs? And I also noted, when Mr. Goodwin was talking about the silica rule, you seemed to cringe a little bit. And so if you would like to comment on that I would be happy to hear your—

Ms. HERSCHKOWITZ. Absolutely. And again, this is a “one size fits all” rule. And we have 13 employees in our foundry. We pour one heat a day, and we are now being lumped in with the Bethlehem Steels of the world and all those other companies to be able to have to comply. We currently have three dust collection systems—one over our furnaces and we have what is called an AOD refining vessel which collects all the dust. We are also putting in a heat exchanger, which is going to get rid of some of the small fines and also get us a better quality casting.

So we have a very strong safety program. We have employees internally. We have a Safety Committee. We have safety leaders. Anybody can stop a heat at any time if they feel that it is unsafe. They have OSHA masks that are qualified. We also have a clean air mask at the cost of, I think it was \$10,000 in the powder burning area to be able to do that. So I do feel that our foundry environment is very, very safe and there is very little risk of silicosis. But realize that it is still a foundry. And if we were to implement this, if the four dust collection systems that we have already invested in, whether or not you can get a used one because foundry dust collection systems have to be much stronger. So if we could get a used

one, maybe we would be looking at half a million dollars. And if not, it would be up to a million dollars.

Now, realize this is a 13-person foundry with revenue of just over \$4 million. So it becomes very, very difficult. And introducing water into a foundry process is terrible. As soon as you put water into molten metal you get a huge explosion. So if this regulation is passed, I am going to face the conundrum of whether or not we even adhere to it. Are you better off risking the lives of your employees to meet a regulation? I do not think so. I am very proud of our employees. They are very highly skilled, and I just very much fear that it could also not impact the foundry, but the foundry provides castings for our other employees. We have a total of 150 employees and all their jobs would be in jeopardy.

Chairman CHABOT. Thank you. And the government should not put you in that position, in my opinion.

Ms. HERSCHKOWITZ. Thank you.

Chairman CHABOT. I have got little more than half a minute left. So Mr. Anderson, let me turn to you quickly.

Do you have an estimate of how much time and money it will take for your company to reengineer its products to comply with the new energy conservation standard? And did anybody from the Department of Energy reach out to you to find out how it was going to affect a business like yours?

Mr. ANDERSON. Yes. We were reached out to by a consulting company called Navigant Consulting early on. What we have invested, we probably—we have had thousands of manhours into it. So four engineers, four technicians working for nine months to comply with the 2009 rule. The 2017 rule is going to be slightly different where it is somewhat less of a leap since the last rule, but the problem lies in that we are gridlocked because the EPA now is requiring a new refrigerant. Or they actually took our refrigerant away. So we actually have no certainty on whether or not or what to engineer. So as far as how much will it cost, I guess it depends on—we might not even have the opportunity to do it.

Chairman CHABOT. For what it is worth, that is the same thing I have been hearing from the heating and air conditioning folks in my district as well, and they are very concerned about it.

My time is expired. I will now yield to the ranking member for five minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Mr. Goodwin, many observers have noted the massive amount of statutory and presidentially-issued requirements and hurdles that agencies are subject to in the regulatory process. Some have even suggested that this has resulted in the ossification of the rule-making process. To this point, research had found that it takes an average of 10 years for OSHA to develop and promulgate a health or safety standard. Do you believe that the regulatory process itself has become so overly burdened that it is in effect ossified?

Mr. GOODWIN. Yes, I do share that view. Agencies do work under a large welter of procedural requirements that they have to satisfy during the rule-making process. I think a lot of these sprouted from good ideas but they have reached this point where they become duplicative and ultimately counterproductive so that they distract agencies from considering what is really important

when developing a rulemaking and sort of send them off on these wild goose chases that ultimately do not lead to better regulatory solutions for the folks they are trying to protect or the small businesses that are ultimately subject to them.

Ms. VELAZQUEZ. Can you please explain how many regulations, and you mentioned it in your statement, benefit businesses, both big and small, especially when it comes to increasing the productivity of their employees? Can you elaborate on that?

Mr. GOODWIN. Sure. You know, I think one of the best examples I have seen is a couple of years ago I was looking at the Regulatory Flexibility Act reviews that OSHA does on its existing regulations and there was this really interesting case study about OSHA's cotton dust rule. And what it found was that this rule directed the textile industry to institute new processes in manufacturing, and it reduced the workers' instances of this lung disease called brown lung disease. But what they also found—by 99 percent. It was by all accounts just a huge public health victory. But what they also found was this really interesting economic side benefit. Prior to the rule's implementation, the industry's productivity gain was increasing year over year by 2.5 percent. After the rule's implementation, their productivity gains were increasing by 3.5 percent, and that was because this rule largely led these industries to sort of revolutionize their manufacturing processes and it was a win-win for workers. It was a win for the manufacturers and their productivity gains led to more profitability and increased employment rates.

Ms. VELAZQUEZ. Can you discuss your perspective as to how fuel standard regulations have been a real driver when it comes to the development of advanced technologies, energy technologies, and how have rules such as these contributed to the U.S. standing globally?

Mr. GOODWIN. Sure. You know, as we tackle climate change, one of the simplest ways, the cheapest ways of reducing our global climate footprint is to adopt energy-efficient products. It is unavoidable. And what regulation can do is sort of help us move along that path in a more predictable, ultimately cheaper way I would say because the process will be smoother. And I think energy efficiency regulations in particular can help there by specifying clear rules of the road for everybody. And the manufacturers in the U.S. that are subject to them will ultimately be better positioned to manufacture the best, cheapest, most effective energy-efficient products, not only for folks at home, but also, ultimately, for markets abroad. And you know the manufacturers of these products in China and stuff, they are working hard on developing these products and they want to sell them to us.

Ms. VELAZQUEZ. Thank you.

Mr. GOODWIN. I think we should sell them to them.

Ms. VELAZQUEZ. Mr. Anderson, the Department of Energy estimated that the commercial refrigeration rule will result in substantial energy savings to customers, many of which include small businesses, like restaurants, grocers, and convenience stores. However, there are significant costs on the other side of the equation to small manufacturers like yourself, as well as transitional costs to con-

sumers. How do you propose that we best balance these costs and benefits in the rule-making process?

Mr. ANDERSON. Well, as far as balancing the costs, for small manufacturers, I would like to ask DOE—I would like to have DOE make some changes as far as the 2017 rule and ask Congress to create a bill to actually remove the 2017 restrictions, change the timeframe in between the intervals for when we have to redesign our product. Right now we have to redesign every five years. That does not give us any breathing room.

Now there are cumulative regulations with the EPA. So the EPA is throwing in that we have to change our refrigerants. I am not off the subject. So we have to take into account what the energy efficiency will be with a new refrigerant. So they need to have a coordinated effort at some point in time. Right now we will be out of business if we are supposed to use R450A on January 1, 2016.

What I suggest is that some type of bill be written so that in 2022, when the DOE needs to have their next revision of the standards, that they couple that with the EPA's proposal, and whatever refrigerant they may come up in between then, that way we can work on a supply chain, we can work on all the new innovations within the same amount of timeframe that we can have a good efficient product.

Chairman CHABOT. Thank you.

Ms. VELAZQUEZ. Thank you.

Chairman CHABOT. Thank you. The gentlelady's time is expired.

If the ranking member is okay with it, I am going to yield to the gentleman from Michigan who is not on this Committee, but we would extend the same courtesy to members on the democratic side if you would like to do that in the future.

The gentleman from Michigan is recognized for five minutes.

Mr. HUIZENGA. Mr. Chairman, I deeply appreciate that, and my other colleagues that are on the Committee, allowing me to sneak out of our other hearing and come here.

I just want to get this straight. We just heard that in battling our climate footprint, having regulations in conflict like this, help move along in a more predictable and cheaper way American business, there are clear rules of the road, and that your employees have become more productive as you have been trying to build your businesses. I am just curious what your response is to that. And if we can start with Ms. Reichard.

Ms. REICHARD. Okay. So we are more productive at less cost, et cetera. I do not think regulations actually accomplish that. Let me say that we support strong health and safety regulations based on sound science that protect consumers.

Mr. HUIZENGA. And by the way, if I can just jump in.

Ms. REICHARD. Yeah, sure.

Mr. HUIZENGA. It is kind of sad that everybody—

Ms. REICHARD. I know. It is sarcasm.

Mr. HUIZENGA.—has to put this disclaimer in.

Okay. You are looking at the grandson of a man who was part of the original sit-down strikes with Oldsmobile in Flint, Michigan. All right? My family is directly tied to those first needs of safety and concern for employees. We are well beyond the discussion

about safety for employees when we are talking about the EPA and DOE not getting on the same sheet of music here and as you are dealing with your regulations. But please, quickly go ahead.

Ms. REICHARD. Right. So we are not asking for regulations to be eased in regard to health and safety; we are asking for them to be worked on in partnership with industry so that they do not end up being unnecessarily burdensome and complex. A more complex program does not always compute to a better program, understanding that nothing has changed in regard to the materials that we are delivering or that our workers are handling. It is simply more complicated, and now they have to be trained. They have got a lot more training. They have to be using different systems. We have taken perfectly good printers, and I am a huge advocate for sustainability, and we have had to throw them away. They have been obsolete.

Mr. HUIZENGA. There is a little bit of irony there.

Ms. REICHARD. So nothing good has come out of this particular regulation as far as health and safety goes.

Mr. HUIZENGA. Ms. Herschkowitz?

Ms. HERSCHKOWITZ. Congressman, first, I would submit to you that we never would have won World War II had we had—I will start over. Congressman, I would submit to you we never would have won World War II had we had half these regulations in place.

But having said that, we are in a global marketplace. A friend of mine was recently in a foundry in China and they were pouring molten metal without shoes. And he asked them, “How can they not have on safety equipment?” And the response was, “There are 20 people that want that particular job.” So we have to absorb that. We have to—

Mr. HUIZENGA. It is an unlevel playing field.

Ms. HERSCHKOWITZ. It is a very unlevel playing field. And what we are doing is we are pushing jobs to China. We are pushing jobs to India where they do not have these regulations.

Mr. HUIZENGA. And Mr. Anderson, I am assuming that hiring consultants to figure out the labyrinth of new federal regulations is not exactly viewed as job growth; correct?

Mr. ANDERSON. No, it is not. We wear many hats in our company. I wear a lot of hats myself. It is not easy reading through 6,000 pages of regulatory rules of that stack over there.

Mr. HUIZENGA. And again, this was just February. And by the way, February, there was a federal holiday, so thank the Lord, because there would be another stack on top of here.

Mr. ANDERSON. Yeah, we absorb all the cost of regulatory, so as far as reducing the costs or making us more competitive, regulations do not do that for Structural Concepts. And to increase energy efficiency in our product, we typically have to go to the next technical component. Take it from a fluorescent light to an LED light, and we have to wait for that lifecycle curve for the cost to come down. And with the speed at which all this stuff is coming at us, that lifecycle cost gets pushed into our product. It will come down and it has come down, but we still have to absorb a lot of that cost in the meantime.

Mr. HUIZENGA. Mr. Chairman, coming from industrial states like Ohio and Michigan, and even that little place called Indiana down below us I think, the states and the people that come from states that build things understand what it means to have a supply chain. And I think so often these regulations do not reflect that reality. And I am sure all three of you have dealt with that.

And I know, going to Structural Concepts, that has been expressed explicitly. It is not just good enough to have a product to use; you then have to have people that are going to manufacture it. You are then going to have the people that are going to be supplying it. And you have to have critical mass on it. You have to then reengineer all of your equipment. Is that not, and maybe just in closing you can touch on that. And again, thank you.

Mr. ANDERSON. Yeah, for 2017, or even the EPA, we will have to go through and look at every single refrigeration component in each of our 400—or actually, probably 600 models now. That is no small chore. Machine-size compartments can change. The physical cabinets inside can change dimensions, so we will have to change the whole product structure potentially. It is not an easy task to accomplish this.

Chairman CHABOT. Thank you very much. The gentleman's time is expired.

The gentlelady from North Carolina, Ms. Adams, is recognized for five minutes.

Ms. ADAMS. Thank you, Mr. Chair. And thank you to all of you who testified today.

Mr. Goodwin, during your testimony you touched on some very troubling tales regarding the Small Business Administration's Office of Advocacy Works and the apparent lack of input from actual small businesses in the decisions that are made. This office is meant to serve as a voice for small businesses within the Federal Government, and obviously it is necessary to ensure that the office carries out this directive. But more importantly, we must ensure that small businesses have adequate representation. In your opinion, what are some steps that can be taken to ensure that the SBA Office of Advocacy Works is listening and speaking for real small businesses?

Mr. GOODWIN. Well, I would echo a lot of the recommendations that were made in the GAO report, and they called upon the Office of Advocacy to do a better job documenting their outreach efforts in developing recommendations that they include in their comment letters. So I think just greater transparency would go a long way because if people know who they are talking to, then they will be much more strongly encouraged to talk to small businesses. So I think that is a big part of it.

I think a big part of it would be certain agencies have to do something known as—or I call them SBREFA panels. Under SBREFA, they have to do panels where they discuss rules before they are formally proposed, and they could take steps to make sure that actual small businesses are participating in those panels rather than representatives of large trade associations.

Ms. ADAMS. Okay. And do you think it is important to see that not only small businesses have a voice but also that small commu-

nities within small businesses, such as black, women, minority-owned business, have guaranteed representation within this office?

Mr. GOODWIN. You know, I have not really thought about minority representation but it certainly would make sense. I think it is important to have, I mean, in particular to have small businesses. I mean, if their statutory mission is to serve as a voice of small businesses, then they should at least be listening to the voices of small businesses. And from what I have seen and from what the GAO has seen, that is just not happening. Instead what we are seeing is emails between the Office of Advocacy staff and these lobbyists for large trade associations. At the very minimum, that needs to change.

Ms. ADAMS. All right, the black and the minority-owned business voices matter as well. Thank you for our comment.

Mr. GOODWIN. I do not disagree.

Ms. ADAMS. You spoke of some ways that we can avoid an either/or mentality when it comes to protecting the public and empowering small businesses. One was to partner small businesses to promote beneficial synergies on regulatory compliance. So can you expand just a little bit upon what it would look like and how it would benefit small businesses in meeting regulation standards?

Mr. GOODWIN. Sure. You know, I was just trying to think of creative solutions for how regulatory compliance, you know, which nobody likes, could be turned into a plus for folks. And I know that the Small Business Administration, which is distinct from the Office of Advocacy, runs contract programs in connection with government services. So building off those contracting programs, perhaps a program could be designed where the SBA would identify the kinds of small businesses that might provide compliance assistance, so things like small law firms, small accounting firms, that sort of thing, engineering consultant firms, that sort of thing. And then they could be partnered up with small businesses in this way where, you know, one small business's compliance provides business for another small business. Everybody wins.

Ms. ADAMS. Okay. You also spoke about how regulatory benefits exceed regulatory costs by almost eight to one, reducing the burden to not only small businesses but the American public in general. So can you speak more to the savings that can be achieved by regulatory regulation compliance, for instance, lost workdays, less hospital visits, et cetera?

Mr. GOODWIN. Sure. One thing that is worth emphasizing on that eight-to-one cost benefit analysis is that it is highly skewed away from benefits and in favor of costs. So that probably understates it a great deal. But taking on your question, one of the big costs that the Clean Air Act has been able to address over the last 20 years or so is reducing missed workdays, reduced activity days, missed school days. If a kid is sick, his parents have to take time off. All these sorts of things are important benefits of these public health regulations that save society a lot of money and do a lot of good for business as well.

Ms. ADAMS. Thank you. I think I am just about out of time. I yield back.

Chairman CHABOT. Thank you. The gentlelady yields back.

I will now yield five minutes to the gentleman from Kansas, Mr. Huelskamp.

Mr. HUELSKAMP. Thank you, Mr. Chairman. I appreciate your technical language. It was either stupid or dumb regulation.

Chairman CHABOT. Dumb.

Mr. HUELSKAMP. Dumb. And for the record, with unanimous consent, I am opposed to “dumb” regulations as well.

But ma’am, if I might, can you hold up your bottle and the big sheet? And as you understand the regulations, these are coming—and I did not catch, which agency is requiring this?

Ms. REICHARD. This is the GSH regulation out of OSHA.

Mr. HUELSKAMP. Okay. OSHA is requiring that. How did they tell you to wrap that around the bottle?

Ms. REICHARD. That is an excellent question. There is actually no guidance given from OSHA in regard to applying this label to this bottle.

Mr. HUELSKAMP. Okay.

Ms. REICHARD. So every single company has had to adopt their own avenue for accomplishing that. Some companies wrap—

Mr. HUELSKAMP. And what would OSHA—what would they fine you if you did not comply with some mysterious regulation?

Ms. REICHARD. Well, OSHA files—I cannot answer that question because OSHA files are typically done on a basis where they do an analysis of each individual time that it happened and how many times you shipped. It would be a lot of money.

Mr. HUELSKAMP. And what is toxic in that bottle?

Ms. REICHARD. Pardon me?

Mr. HUELSKAMP. What is toxic in that bottle?

Ms. REICHARD. There is nothing toxic in that bottle.

Mr. HUELSKAMP. There is nothing toxic in that bottle?

Ms. REICHARD. No, there is nothing toxic in this bottle.

Mr. HUELSKAMP. Okay. I want to clarify that.

I had a letter from a manufacturer, National Association of Manufacturers member. I was at, at least in their community last week and they had an OSHA inspection, and this is a little sticker on a shift knob on a forklift, and it is a \$1.41 sticker, and they received about an \$800 fine, multiplied by two. But OSHA had been by the facility numerous times and they did not see it missing, I guess, until this time. Before they left the facility, OSHA had—they had actually put the sticker on the gearshift, but that was not good enough. So I would take an exception with Mr. Goodwin’s comment that nobody likes regulatory compliance. From what I understand for OSHA, they love regulatory compliance.

Ms. REICHARD. Yes.

Mr. HUELSKAMP. And from what I hear from my manufacturers and the other businesses subjected to this compliance, to quote my manufacturers, “I have never been through an inspection when issued citations were directly related to the actual hazards we work with.”

Ms. REICHARD. Exactly.

Mr. HUELSKAMP. And the whole issue here is to reduce hazards. From what I hear from OSHA and other numerous agencies, it is not about the hazards; it is about the enforcement.

Ms. REICHARD. Yes.

Mr. HUELSKAMP. And so you run in these crazy situations where you have the administration as you indicated, going after raising our costs of electricity, and the end result is we drive your business offshores. And we drive them to other countries, like China, that have a much lower standard. And so no new coal-fired power plants, but they build them every day in China. The end result is we worry about global pollution supposedly, but the end result is we make that happen.

But I wanted to ask Mr. Goodwin, if I could, an issue is the Waters of the U.S. Rule, and I see the Center for Progressive Reform has been strongly in favor of that rule. Is that still your position?

Mr. GOODWIN. Yes, sir.

Mr. HUELSKAMP. Okay. And I would say I totally disagree with that position. If you want to create uncertainty in the agricultural industries, small manufacturing industries, construction industry, the industries here, every industry is using some type of water. It is going to be devastating, not because of the impact but because we do not know what it is. No one knows. And it might create tremendous jobs in Washington, D.C., and creates jobs for think tanks, but at the end of the day, you folks have to comply.

Who here—and Mr. Anderson might read the Federal Register. I am sorry you have to do that, but what about you two ladies? Who regularly reads the Federal Register in your shops?

Ms. REICHARD. We cannot actually spend the time reading the Federal Register. Our company spends over \$750,000 a year belonging to different trade associations. I heard some comments in regard to trade associations should not be able to call on SBA, and I thoroughly disagree with that. Small businesses lack resources. We have to band together in order to be able to afford the cost to analyze all of these bills that are coming out of Washington, D.C., and we have to band together to have the bandwidth, for lack of a better word, to approach Washington, D.C., to try to work with the agencies, to create better regulations that are not too complex, that actually improve safety and health and wellness of the employees they are working for every day.

Mr. HUELSKAMP. Yes, Janis?

Ms. HERSCHKOWITZ. We rely on our trade association, the American Foundry Society. We also have an outside safety consultant who is available 24/7 that we can call at any time if any of our plants have a concern.

Mr. HUELSKAMP. Is he paid for by the government, I guess? Of course not. Of course not. And that is my concern because these regulations—I think Mr. Goodwin even agreed with that—they hit harder on small businesses than the big guys.

Ms. HERSCHKOWITZ. Oh, my gosh, yes.

Mr. HUELSKAMP. And you will see many of the larger companies, they actually lobby in favor of these regulations because they fear competition from the small businesses.

Ms. HERSCHKOWITZ. Interesting.

Mr. HUELSKAMP. And I have seen that again and again. And so I appreciate your testimony, and continue to do that. I would also appreciate you, if based on your testimony, you do get harassment back from your regulatory agencies. I am certain the chairman—I definitely would like to know about that. I have members,

I have constituents that are afraid to tell me and let me make public about outrageous actions by agencies because they fear the harassment and regulatory retaliation. And there is no room for that. So I yield back, Mr. Chairman.

Chairman CHABOT. Thank you. The gentleman's time is expired.

The gentlelady from Michigan, Ms. Lawrence, is recognized for five minutes.

Ms. LAWRENCE. Thank you, Chairman, and Ranking Member.

I wanted to say hello to Mr. Anderson. I am from Michigan, and I am really glad to see a Michigander her.

As you know, I represent the state of Michigan, which ranks among the top five states in manufacturing employment. I strongly believe that manufacturers are the backbone of this nation's economy. And as we grow manufacturing, we always see an uptick in our economy.

But I also strongly believe in the efficient use of energy and reducing waste. Both of these efforts have generated billions of dollars in savings for Michiganders. So what I want to talk to you about is the Department of Energy, the DOE's revision of energy conservation standards for commercial refrigeration equipment, which is your industry; correct?

Mr. ANDERSON. Correct.

Ms. LAWRENCE. Can you briefly walk me through and make me understand or explain the real impact your company obtained by complying with the 2012 DOE rule, and then secondly, the impact that the DOE's justification, or what you felt was the justification in issuing a new rule in 2014?

Mr. ANDERSON. Yes. The 2012 rule, Structural Concepts, we embraced that rule. We are a company that strives to make our product more efficient. So we went above and beyond what was required by the standards. Sometimes we went probably, in some cases, 15 percent below what was required, maybe even more in some equipment classes. That took us three years to do. First, you had to develop all the concepts and components that would achieve this energy efficiency. Then you had to review the current product to see how you could engineer that in to each refrigerated display case. And then you physically had to do it. Once you got it, you had to build the case, and then you had to test it and verify it. So there was a lot of time, a lot of money spent on building equipment, building test labs to achieve all that.

Self-contained, we do make the most efficient refrigeration self-contained open display case in the U.S., we believe. So when 2017 came along, they took another 20 percent out. In most cases we can still achieve that energy with minimal engineering, so it will not affect us that much. But we still have to review every single model. We still have to go through all the bills and review what is in it, review the energy, and our remote units, they are self-contained, and remote is a machine room compartment that is separated from the display case. Remote units, those suffer the most. So to comply with the 2017 rule, we will have to switch as a standard to across-the-board LED lights in all of our product. So fluorescent lights will go away in 2017 as the rule stands.

So reviewing every single, all 600 models, will put another burden on us, and it will actually eliminate another product in the United States of, at least for us, the fluorescent light bulb.

Ms. LAWRENCE. Do you agree that the three years it took for you to comply and verify that you are now realizing a reduction in energy costs, so there has been a savings to you?

Mr. ANDERSON. There has been a savings to our customers in terms of lifecycle costs.

Ms. LAWRENCE. But to you as an industry?

Mr. ANDERSON. To us as an industry, we as an industry have reduced the energy costs in the United States; yes.

Ms. LAWRENCE. Okay.

Mr. Goodwin, frankly, the burden on small manufacturing caused by overregulation is a term that we hear far outweighs the burden that agencies face in complying with rulemaking requirements. Do you agree with that?

Mr. GOODWIN. So the question is that the cost that regulations impose on small businesses are greater than the costs—

Ms. LAWRENCE. Of rulemaking?

Mr. GOODWIN. Sure. Yeah, I guess. Yeah, of course. I have never thought about the question, but yeah, of course.

Ms. LAWRENCE. Okay.

But what are the costs to our environment, our economy in that continually challenging current energy efficient standards and improving them?

Chairman CHABOT. The gentlelady's time is expired but you can answer the question.

Ms. LAWRENCE. Thank you.

Mr. GOODWIN. Thank you.

The cost of not complying with some of these regulations, the cost of inaction or the cost of delay can be huge, you know, in terms of regulations to address climate change, obviously. Well, not obviously, but they are, I mean, it could mean the difference between avoiding the worst consequences of climate change or not. For something like a workplace health and safety standard, the inaction on certain standards could mean the difference between hundreds or even thousands of lives saved or illnesses prevented every year. So, I mean, they are huge; yeah.

Ms. LAWRENCE. Thank you, Mr. Chairman. I yield my time.

Chairman CHABOT. Thank you very much. The gentlelady's time is expired.

The gentlelady from American Samoa, Ms. Radewagen, who is the chair of the Subcommittee on Health and Technology, is recognized for five minutes.

Ms. RADEWAGEN. Thank you, Mr. Chairman.

My question is for all three small manufacturer witnesses—Ms. Reichard, Ms. Herschkowitz, and Mr. Anderson. What could the Federal Government do to make it easier for your companies to grow, remain competitive, and create new jobs?

Ms. REICHARD. Okay. Well, I will agree with Mr. Goodwin at the end of the table, that a SBREFA panel would have absolutely been beneficial in this process. The panel certainly would have revealed the reality that there would be no cost savings in a nonharmonized system and could have brought to life proactive solutions

that industry could have provided to actually benefit worker safety. Some of the best ideas come from our workers or they come from consumers. Why should industry not be at the table?

Ms. RADEWAGEN. Ms. Herschkowitz?

Ms. HERSCHKOWITZ. I agree also, a SBREFA panel. Getting more input upfront because this regulation with the silica obviously you do not introduce water into that environment. As I said earlier, you should not have “one size fits all” regulations. It should be consistent across the board, and it should also look at the regulations where these jobs might be going, which are not even close to what we are being able to do now. And you should make sure that the existing regulations are in place and are being adhered to before we add on more, which I do not think is the case with the silica sand. Thank you.

Mr. ANDERSON. I kind of mentioned it before, but the EPA for us—the EPA and the DOE need to have a coordinated front for us to be able to efficiently move forward with energy efficiency and environmental protection.

The other thing that could be done is a more in-depth look—and this is specifically for the DOE—of equipment—there are 49 equipment classes, and I am of the belief that there was not a deep enough look or, nor they based some of their validation on one data point. I have been in the industry for 23 years. I have grown up in test labs. I am a hands-on guy. I do not see how the Department of Energy can come up with a standard based on calculations and validate that with one point. I do not care how good of an engineer you are. Yeah, it boggles my mind.

Ms. RADEWAGEN. Thank you. I yield back. Thank you, Mr. Chairman.

Chairman CHABOT. The gentlelady yields back.

The gentleman from Nevada, Mr. Hardy, who is chair of the Subcommittee on Investigations, Oversight, and Regulations is recognized for five minutes.

Mr. HARDY. Thank you, Mr. Chairman.

This conversation really gets me. I have a million questions to ask being a former business owner myself.

I am going to go to Ms. Herschkowitz first, and talk about the silica sand.

Ms. HERSCHKOWITZ. Okay.

Mr. HARDY. In my industry, we are unable to have a confined space, so we have to provide a uniform any time we have to do any sandblasting with silica sands. So we provide a uniform, do such. But where you are having to do full intakes, do you think it is fair that all I can do is with a uniform and there is no shop that I am in, do you think that I should be required to do the same that you are and all industry and have the same requirements you do in the manufacturing end to have full-blown evacuation systems, I guess? Or whatever you are having to do?

Ms. HERSCHKOWITZ. Well, it would be ludicrous but I think that Congress should be able to do that to see how difficult it is. But the one thing about the silica sand is with the respirators, for instance, when you said about sandblasting, we have respirators where the person—and it cost \$10,000 a piece two years ago to be able to put them in and it is \$5,000 a year to maintain—but some-

body that goes into a sandblasting facility actually puts on this respirator and they are breathing clean air.

Mr. HARDY. I will interrupt you right there. I understand where you are at.

What I am trying to get to with this situation, there are different applications all over this country of how we do it.

Ms. HERSCHKOWITZ. Right.

Mr. HARDY. We do bridges, all kinds of projects. Before you can pour concrete, you have to evacuate any rust on that, which you have to go through that system.

Ms. HERSCHKOWITZ. Sure. Sure.

Mr. HARDY. Or we have heavy-duty equipment. We have to clean parts. It cannot be done in a shop, so you are out in the desert.

So my comment is, when regulators come up with these ideals, the desert southwest, which is California, Nevada, Utah, New Mexico, Arizona. You can go on and on and on. Major pockets of recreation areas that are nothing more than silica sand. We play on them. We go to our beaches. We play on them.

Ms. HERSCHKOWITZ. Correct.

Mr. HARDY. Should there be a regulation there to force people to have to stay off that? Because I believe that silica sand is probably more dangerous from the environmental side, from our use of recreation, than it is—

Ms. HERSCHKOWITZ. Yeah, it would be ludicrous. Absolutely not.

Mr. HARDY. So let us force all our businesses back down to California or down to New Mexico or Mexico or someplace else. Is that not what you feel like is happening to you sometimes?

Ms. HERSCHKOWITZ. Exactly. We get our wedron sand out of the Midwest, which is the cleanest, roundest sand that you can have, and that is what we utilize.

Mr. HARDY. All over the desert southwest. Sand dunes just drift.

Ms. HERSCHKOWITZ. Absolutely.

Mr. HARDY. From spot to spot.

Ms. HERSCHKOWITZ. And we have this better sand trucked in from Chicago area.

Mr. HARDY. I want to hurry and change gears before I lose my time.

Ms. HERSCHKOWITZ. Okay.

Mr. HARDY. Okay. As a small businessperson, I have found over the years that what made my success as a business competing against another was utilizing my employees to come up with a better mousetrap, to constantly talk about safety issues and things like that, and try to implement those OSHA regulations, but also make sure that we were even safer than what OSHA did. Would you say that most businesses strive to do that because that is a competitive environment; we do it naturally on our own?

Ms. HERSCHKOWITZ. Absolutely.

Mr. HARDY. All three of you can answer that.

Ms. HERSCHKOWITZ. You want to protect the welfare of your employees. And we have huddles. We can bring up safety ideas. We have safety committees with managers and hourlies. Yes.

Mr. HARDY. Anybody else want to address that?

Mr. ANDERSON. Yes. We are a continuously-improving environment, and we look for innovation, and we are fierce competitors when it comes to reducing energy and complying to regulatory.

Mr. HARDY. Thank you. And I think that is the way things should be done. And we just talked about it just a second ago. Thank Ms. Radewagen for that comment. But that is what I believe needs to happen from the Federal Government side. The Federal Government continues to try to grow its overreach of us instead of working with the departments or the businesses to find out how they can do a better job. I think business would like to work to make sure it is a safe environment, but do you believe you also continue to have accidents no matter how many safety regulations you have got? What my comment is there is can we regulate people against their own stupidity, so to speak?

Ms. HERSCHKOWITZ. No, you cannot.

Mr. HARDY. Thank you very much. I yield back.

Chairman CHABOT. Okay. The gentleman yields back.

We will go to a brief second round, and I will yield to the ranking member if she has any questions.

Ms. VELAZQUEZ. I take offense when people say that it is stupidity. I can't look in the eyes of the children of my sister-in-law who is dying of asbestos exposure and tell her that regulations are stupid or are dumb. Even if it means saving one life. When you look at West Virginia, or the BP oil spill and the impact that it had—

So Ms. Reichard—

Chairman CHABOT. Will the gentlelady yield for just one second?

Ms. VELÁZQUEZ. Sure.

Chairman CHABOT. Okay. I think just to clarify on behalf of a number of my colleagues, I think what we were referring to is we are not against regulations; we are against dumb regulations.

Ms. VELAZQUEZ. I understand.

Chairman CHABOT. That does not mean all regulations are dumb. Thank you for yielding.

Ms. VELAZQUEZ. But what I am saying is the lessons that we have learned from the past have told us that even when it means saving one life—and let me just say that I am very proud that workers in America wear shoes and masks.

Ms. HERSCHKOWITZ. So am I.

Ms. VELAZQUEZ. I do not want them like in China.

Ms. HERSCHKOWITZ. I agree.

If I could just—

Ms. VELAZQUEZ. Ms. Reichard?

Ms. REICHARD. Sure.

Ms. VELAZQUEZ. I am at that age where I get prescription drugs almost every month, and I am very happy when I go to the pharmacy to get my prescription drugs and see prints or instructions or do's and don't's that are written in a label or papers because the print does not fit the small package, the small bottle. So what is the difference between that? When you go to the pharmacy, you would like to get as much information as you need to have in order to make sure that you follow the prescription instructions.

What is the difference between what is required from pharma or the pharmacy industry and the fact that you need to add that label to your little bottle?

Ms. REICHARD. Sure.

Well, first and foremost, the difference between pharmaceuticals and fragrance ingredients is extreme.

Ms. VELAZQUEZ. Yeah, but the fact is that the label and the information that is required because it does not fit on the label, it has to be printed.

Ms. REICHARD. Before we had the new GHS program, we were already providing appropriate labeling information our products. What I am saying is now the information that we are providing is much more complex, and that complexity is unnecessary in our particular case. You know, there is a crisis of misinformation and scientific misunderstanding in this country regarding chemicals and toxicity, and the chemicals that we have, as they are being used, are not toxic. So having to provide this extensive toxicity information is just distracting. It does not provide for additional health and safety information.

Ms. VELAZQUEZ. And so you have the scientific information that says that none of the ingredients or elements in that little bottle could cause reactions, allergy reactions?

Ms. REICHARD. Let me expand on that. It is important to know that everything is made of chemicals, and anything can be toxic at a certain level. But as we use them, they are not toxic. Oxygen and water can be—either if you do not have enough of them it is a problem; if you have too much of them it can be deadly. In order for an ingredient to affect a human or its toxicity to be determined. You cannot just look at the presence of a chemical. So labeling based just upon a presence—

Ms. VELAZQUEZ. I hear you. I hear you, and I do not have much time.

Ms. REICHARD.—is not beneficial.

Ms. VELAZQUEZ. All I can say is that I have not heard anyone saying that they are allergic to water or oxygen.

I yield back. Thank you, Mr. Chairman.

Chairman CHABOT. Thank you. The gentlelady yields back.

As far as, the ranking member is clearly very passionate about safety, and I would agree with her on that, and I think we all are on this Committee on both sides of the aisle. Mr. Huizenga mentioned that his grandfather had been one of the strikers on one of the issues on the auto lines when they were striking relative to safety issues, and so I think we all feel that way.

Just to give some of the panel members an opportunity to respond to some of the concerns that were raised, I would ask Ms. Herschkowitz first if you would like to—

Ms. HERSCHKOWITZ. Yeah. I appreciate that, Mr. Chairman.

I just wanted to clarify. Our company is not advocating that we do not wear shoes or protective masks. We spend over \$100,000 a year on safety to make sure that our employees are safe. We are always looking for ways to improve upon. My intent on saying that was only to give an analogy as to the other countries that we are competing against. But it is safety first at our place, and I just

wanted to make that clarification. I care very much about our employees.

Chairman CHABOT. Thank you very much.

Ms. HERSCHKOWITZ. Thank you.

Chairman CHABOT. Ms. Reichard?

Ms. REICHARD. In addition, I would like to respond and say that the fragrance industry absolutely provides all the information regarding potential fragrance allergies and that is part of our process. So that information is included within our information.

Chairman CHABOT. Thank you very much.

I want to thank all the witnesses for their participation today.

I have a couple more to respond. Mr. Goodwin, did you want to say something? Go ahead, and then I will go to Mr. Anderson. I am going to give this side the opportunity to close.

Go ahead, Mr. Goodwin.

Mr. GOODWIN. You know, I guess just building off what was just discussed, that is why we like small businesses, because they do—one of the many great things that they do is they are closer to their customers, they are closer to their employees. So ultimately, they are the ones that are in compliance. They are the ones that are going above and beyond what regulations as of them, and that is great. And, you know, there is nothing you can criticize about that, obviously.

What I would say is that what regulations can do is they level the playing field. They make sure that those businesses that are not so upstanding can be held to account, and they ultimately level the playing field. You know, I think that is just one of the additional benefits that regulations can provide for small businesses.

Chairman CHABOT. Thank you.

Mr. Anderson?

Mr. ANDERSON. Yes. Safety is our primary concern at Structural Concepts. I do not think that anybody in this room would want to pull a tuna fish sandwich out of one of our cases that were made so energy-efficient that it could not hold temperature anymore. So what would Structural Concepts do? We would have to obsolete that product.

I failed to mention that we comply to the FDA food code for 41 degrees. We use regulatory UL standards to make sure that our product is mechanically and electrically safe so our customers do not get shocked, do not have shelves fall on them, so on and so forth. Now the DOE is obviously pushing for energy, so we have to balance that, and the EPA is pushing for new refrigerants. We have to balance that as well. So we have four regulations that we have to comply to on our product and balance all of those. And safety is the highest.

Chairman CHABOT. Thank you very much.

And I am almost out of time myself. I would just conclude that mention that we, certainly on both sides, we have heard the testimony of all the witnesses. I think all four of you did a very commendable job, and thank you for coming and telling us what you are dealing with.

We passed legislation in the House recently, the Regulatory Flexibility Improvements Act, and in general, what that would do is it would require when the federal regulators, the agencies that

write all these regulations that one month down there, when they write these regulations, they have to reach out to small businesses who are going to be dramatically impacted by these regulations, and get some input. You know, how they might adversely, both directly and indirectly, impact your businesses because you are, after all, the job creators. You create seven out of 10 jobs in the new economy, and we ought not to be making your ability to grow and prosper and creates jobs for more people more difficult. And I think that is evidence down there that oftentimes we do. And that is not to say there are not important safety regulations that you should have to follow. My analysis is that in general, the vast majority of businesses do try to follow the regulations. You look out for your safety. You are not the bad guys.

So anyway, all members will have five legislative days should they want to revise or extend their remarks.

And if there is no further business to come before the Committee, we are adjourned. Thank you very much.

[Whereupon, at 12:35 p.m., the Committee was adjourned.]

A P P E N D I X

Cynthia Reichard

**On behalf of Arylessence Inc.
& the International Fragrance Association, North America**

Arylessence
the essence of your brand®



House Committee on Small Business Hearing:

Tangled in Red Tape: New Challenges for Small Manufacturers

March 18, 2015

Good Morning. My thanks to Chairman Chabot, Ranking Member Velázquez and the members of the Small Business Committee for inviting me to testify today on the regulatory challenges that small businesses like mine face.

My name is Cynthia Reichard, and I am the Executive Vice President of Arylessence. Arylessence is a leading and creatively driven U.S.-based fragrance and flavor company. We work in close partnership with our clients which include major consumer product and cosmetic companies to develop strategically inspired fragrances and flavors that transform our client's products into winning brands and consumers into passionate, loyal fans.

On behalf of Arylessence, I commend the efforts made by the Committee to alleviate burdensome regulations that significantly hinder innovation and growth, particularly for small businesses.

Mr. Chairman and members of the committee, I can unequivocally say that Arylessence has been hindered by unintended regulatory burdens. I would like to discuss a few of these with you today and focus on one in particular that my company and other fragrance houses continue to struggle with that is administered by the Occupational Safety & Health Administration (OSHA).

First, let me provide some background information on our company and the broader fragrance industry. Arylessence is a flavor and fragrance company that was founded in 1977 by my uncle. I am proud to say that we, like the majority of companies within our industry, are a family-owned and operated small business. When my uncle founded the company thirty eight years ago, he had a dream. He took out a mortgage on his house and a loan on his car, borrowed money from friends, and opened up shop with three employees. I am proud to say that Arylessence now has 120 full-time employees, 3 part-time employees and many contract employees at our headquarters in Marietta, Georgia. We develop and ship fragrances to over 1000 different manufacturers in the U.S. and across the globe. As a family-owned company, Arylessence cares deeply about its employees: we train and promote from within, offer excellent benefit programs at minimal costs, provide tuition reimbursement, and offer financial education, nutrition education, and on-site exercise programs.

I am proud to be here representing not only my company, but also the International Fragrance Association of North America or IFRA North America. IFRA North America is the principal trade association for the fragrance supplier industry in the U.S. and Canada. Like all IFRA North America members, Arylessence sources ingredients from around the globe and crafts unique fragrance formulations that are incorporated into a variety of consumer products including fine fragrances, personal care products such as lotions, soaps and shampoos, household and institutional cleaning products, and home care products including candles and air fresheners, just to name a few. Collectively, IFRA's North America's members comprise a \$1.6 billion industry responsible for more than 90 percent of all scents marketed in the U.S. and Canada. The fragrance industry directly supports more than 720,000 jobs and an additional 240,000 small businesses in the U.S. alone.

You may not have ever thought about how scent plays an important role in the purchase of products, however, 75 percent of human emotions can be triggered by our sense of smell. Our sense of smell is critical to our well-being, and scent alone is a key consumer purchase driver.

Creating a fragrance requires a marriage of art and science. We deal extensively with thousands of different ingredients including natural materials such as essential oils like lavender and rose oils as well as man-made materials developed in laboratories and sourced from a variety of sustainable raw materials. As such, we—and our clients—face extensive regulations across several agencies including EPA, OSHA, FDA, DEA, DOT, and FAA. It's important to point out that these are just the federal regulations and that this list of acronyms does not include the myriad of extensive state and municipal regulations of which we must be prepared to comply.

The impact of complying with these regulations continues to raise the cost of doing business in the United States. Quite frankly, the cost associated with complying with the current regulatory landscape can effectively bar new companies from entering our industry today. These ever increasing burdens limit our reinvestment in our company and our ability to take even better care of our employees who have worked so hard to help us be where we are today.

Arylessence employs the equivalent of six full-time employees whose job functions are dedicated solely to regulatory and compliance issues. In addition, we are currently in the process of hiring an additional regulatory professional to ensure our ability to track and comply with all of the different regulations our industry and our clients industries face.

When the state of Georgia's unemployment rate more than doubled to over 10%, we worked hard to ensure that we did not have to lay off a single person within our workforce. Although it meant making difficult choices for our business, we are proud of the job security that we were able to afford our employees and their families.

While I can give you many examples of how existing laws and regulations have impacted our operations I will focus on one in particular. In 2008 we planned to purchase land and expand our operations by building a large new facility for research and development and hiring an additional 50 employees. As a result of the economic downturn and further exacerbated by costly compliance with new laws and regulations taking effect, we have delayed many of those plans for several years. Despite an improving economy, regulatory and compliance costs continue to limit our capital resources, and, unfortunately, our expansionary plans have been reduced and many of them remain in the planning stage today. Just think about how many jobs would have been created by that expansion and how this is happening across the USA.

The bottom line is that there are far too many regulations that impose far too heavy a burden on American small businesses like Arylessence.

In the last five years, our company has been facing some of the most economically significant laws and regulations. In particular we have faced rising health insurance premiums under the Affordable Care Act, higher income taxation rates and a variety of rules and regulations administered by the Occupational Safety & Health Agency (OSHA).

Impact of the Affordable Care Act

Ninety-six percent of small businesses have faced rising health insurance premiums in the wake of the Affordable Care Act, and Arylessence is no different. Between 2012 and 2014 we experienced an average 13.6% annual increase in our health insurance premiums. For 2015, our provider has given us a premium increase of 41 percent. These increases have been discouraging and are detrimental to our bottom line. We are continuing to look at options and regrettably we are now in the position of having to pass some of these additional costs on to our employees.

Rising Income Tax Rates

Also like many small businesses, Arylessence has had to pay higher taxes. We are an S-Corporation and our income tax rate was raised from 35% to 39.6% to fund the Affordable Care Act. In 2014, our Federal tax bill alone increased exponentially. Think about how many people that would employ or how much equipment that would buy.

OSHA & The Globally Harmonized System of Classification & Labeling

Today I would like to focus my testimony and share our experience in complying with the OSHA's regulation known as the Hazard Communication Standard. This standard is OSHA's interpretation of the Globally Harmonized System of Classification and Labeling of Chemicals (GHS). An experience, that serves as an example of a burdensome regulation that has not resulted in safer workplaces. In fact, it has caused significant cost increases for our company.

GHS began as an international initiative to standardize the labeling and classification of hazardous chemicals in the workplace. GHS was billed and sold to the industry as a cost saving device that would make it easier for companies to exchange information globally. But the truth is the exact opposite: it has cost Arylessence significant amounts of money without adding any safety to consumers or employees.

In order to comply with GHS, a manufacturer or distributor must identify the chemicals present in their product shipments, and classify the risk of those chemicals based on a hierarchy established by GHS.

All of this information must be included on safety data sheets or "SDSs" and labels which must be affixed to product containers in the workplace. The labels must include color pictograms and a

number of other informational elements including symbols, signal words, and lengthy hazard statements.

This is a complicated set of forms that required us to adjust our operations to comply.

Prior to GHS, most countries had their own individual regulations addressing the handling of chemicals in the workplace. With the increase in global commerce, the United Nations began a new initiative, known as GHS, which aimed to ensure consistency and predictability for all companies that were operating globally and so that workers would have a clear understanding of what materials they were in contact with. The objective behind the regulation was reflected in its name; a Globally Harmonized System of the classification and labeling of chemicals.

OSHA adopted GHS in March of 2012 and unfortunately, like many other countries, interpreted the regulation in a unique way resulting in nonconformity with the global system. OSHA is currently in the latter part of the implementation phase.

Though there are many examples where OSHA deviated from GHS, one of the most difficult issues for my company, and the fragrance industry in particular, is the treatment of small or sample sized products. Despite the pleas of manufacturers to OSHA and even though other jurisdictions including Canada and the European Union allowed for an exemption for small bottles, OSHA elected to not give any special consideration. The result is a new, arduous, costly and incredibly burdensome process that has not increased safety and has hindered commerce.

In creating a fragrance for a customer, such as a honeysuckle scent for a hand lotion, Arylessence may ship a batch of 2–5 samples of honeysuckle fragrances to a potential customer. Each fragrance will be unique and contain different ingredients.

Unlike many industries that ship samples of chemical products in large containers, the fragrance industry typically deals in extremely small quantities. For example, the sample fragrances that are shipped generally measure 0.5–1.0 ounces and are contained in small vials.

Now, under the new GHS regulation, rather than requiring a safety data sheets on only those products purchased, each individual sample, no matter how small, must include a label and safety data sheet in order to comply with GHS.

On average, Arylessence sends out 10,000 samples per year, each of them a unique mixture of ingredients. And now, under the new regulation, on an annual basis we need to create 10,000 unique safety data sheets and labels for even half ounce samples of fragrances. And since the research and development of scents is done for no cost to our clients in the hopes of securing a production contract—this represents added cost that cannot be directly passed on to our customers.

Adding to these new costs is the fact that OSHA has issued no guidance in regard to how the labels must be affixed to small packaging or containers. We must fasten these labels to half and one-

ounce bottles. The practicality of this is almost impossible and we have received no guidance from OSHA other than it must be done. Despite our pleas, OSHA has not provided an exemption on this issue like other jurisdictions. If we do not affix the label on this vial we will be out of compliance and are subject to facing severe fines from OSHA.

Additionally, there are significant implementation problems that OSHA has refused to address.

The computer technology to comply with this law did not exist when the implementation dates were announced. The industry is required to comply with GHS by June 1st of this year. By not phasing in the requirements, Arylessence has had to develop and implement new computer systems, purchase and install new printing devices, and must simultaneously get information from suppliers, complete the analysis to fill out the datasheets and labels, and send it along to our customers who also have the same compliance date.

GHS was sold to the industry as a cost savings initiative. In 2011, the Obama Administration estimated that GHS implementation would realize \$585 million in annualized savings for employers. In our experience, compliance with GHS has thus far taken us three years to implement and cost our small business well over \$500,000 and untold labor hours to implement.

The new GHS data sheet requirements have forced us to purchase databases of chemical ingredients. However, the information in these databases was not compatible with GHS formatting and so we had to marry the databases with our own proprietary software, which required a \$200,000 investment.

In addition, we had had to retool all of our hardware and documentation to meet the new GHS formats. Labeling has been a long-standing requirement for companies who deal with chemicals, and Arylessence previously invested in the requisite printing equipment, training, and supplies. Our equipment was effectively obsolete when the new regulations forced us to purchase new printers with enhanced color capabilities. The average cost of one of these industry-grade printers—capable of thousands of GHS labels per year is over \$20,000. We require five. This is happening across the country.

Arylessence and other members of IFRA North America have invested significant time and money literally reinventing the wheel to comply with GHS regulations, and yet, there is no clear solution in sight for many U.S. manufacturers with a looming implementation deadline of June 1, 2015.

Conclusion

Mr. Chairman, members of the committee, over the past eight years I have witnessed a shift in our industry. Associations like IFRA North America used to focus more resources on building business opportunities, networking, and raising awareness of this unique industry, but today they must largely focus on regulatory and policy issues.

Small businesses like ours continue to struggle despite a more positive economic outlook. This is largely due to the cost of increasing regulations: regulations like GHS that do not, in fact, result in safer workplaces, harmonized communications nor enhanced commerce.

U.S. manufacturers simply need an environment conducive to growing and creating jobs. We need economic stability, certainty and predictability and common-sense regulations that don't unfairly disadvantaged small firms.

Arylessence along with all IFRA North America members follow the highest safety and environmental standards for fragrance manufacturing and fragrance ingredients. We are proud of this commitment and we are happy to comply with common sense regulations that ensure the safety of the environment, our employees, and our customers.

Arylessence and IFRANA stand ready to work with you in helping to support legislation that insures regulation without representation is replaced with understanding of impacts and proactive solutions.

Thank you again for this opportunity to share my experiences with the committee; I am happy to answer any questions you may have.

About Arylessence

Arylessence develops, creates and manufactures flavors and fragrances for a vast array of products including perfume and cologne, cleaning products, candles, shampoos, detergents, and lip balms. Our inventions are not sold directly to the consumer, but rather to an institutional or consumer product company where they are incorporated into the final product.

Arylessence was founded in 1977 and is a family-owned and operated small business. We have 120 full-time employees at our headquarters in Marietta, Georgia, and we provide products to over 1000 different customers in the U.S. and worldwide.

About IFRA North America

IFRA North America represents over 90% of all fragrances developed and sold in the United States and Canada. Their member companies create and manufacture fragrances and scents for home care, personal care, home design and industrial and institutional products, all of which are marketed by consumer goods companies. IFRA North America also represents companies that supply fragrance ingredients, such as essential oils and other raw materials, used in perfumery and fragrance mixtures.



Testimony
of
Janis Herschkowitz, CEO, PRL Inc.

On Behalf of the American Foundry Society

Tangled in Red Tape: New Challenges for Small Manufacturers
U.S. House of Representatives
House Small Business Committee

March 18, 2015

Chairman Chabot, Ranking Member Velázquez and members of the Committee, thank you for the opportunity to testify before you today to discuss significant concerns regarding growing regulatory burdens and a mounting wave of upcoming regulations that will face my company and the U.S. metalcasting industry. As you know, the burden of regulation falls disproportionately on manufacturers, particularly on small manufacturers because compliance costs typically are not affected by economies of scale.

My name is Janis Herschkowitz, President and CEO of PRL Inc. PRL is a holding company for three subsidiaries, which includes a foundry, an upgrading facility and two machine shops. I am a second generation Pennsylvania small business metalcaster employing over 150 team members in Lebanon County, Pennsylvania. My mom, sister, and I are the sole owners of our business.

Metal castings have applications in virtually every capital and consumer good and are truly the foundation for all other manufacturing. I am testifying on behalf of the American Foundry Society (AFS), our industry's major trade and technical association, which is comprised of more than 7,500 individual members in every state in the country. Our industry is dominated by small businesses, with over 80 percent of U.S. metalcasters employing 100 workers or less. In fact, many are still family-owned, like mine, and oftentimes, simply don't have the sales revenue or resources to implement a whole host of new regulations.

My family moved to the States from Bolivia in 1971 for political reasons to live the American dream. In 1972, my father purchased a small company with 13 employees whose primary function was to x-ray and upgrade castings for the nuclear power industry. He expanded the core of his business and purchased two machine shops. Following his death in 1989, I became President and went on to open a new company, which was a foundry. This was considered a bold decision at the time, particularly since the number of foundries in the U.S. has been steadily declining. The foundry was the final piece of the puzzle which allowed PRL to provide our customers with full vertical integration capabilities.

Today our foundry pours both ferrous and non-ferrous alloys to product metal castings ranging in weight from 10 to 12,000 pounds for the military, nuclear, energy, petro-chemical and commercial sectors.

Due to size limitations, I was unable to bring any of the castings we produce. However, I have several pictures which are attached to my written testimony [Attachment A]. I also brought a small valve block that we machined out of a piece of bar stock for the military. Our companies are proud suppliers of high specification castings for many industries. As an example we manufacture high specification finished machined pump and valve bodies used in nuclear submarines and power plants around the world. We have a highly skilled workforce, and we play a critical role in our nation's defense. Our team's dedication to quality is reflected in our customer base which includes such important suppliers as Northrop-Grumman, Curtiss-Wright, Electric Boat, and PSEG.

Under my leadership PRL has overcome many challenges including opening a foundry, being highly leveraged while losing the majority of our customers due to defense cuts, and surviving the onslaught of foreign out sourcing. I know firsthand the challenges of trying to meet a payroll and the stress of having to borrow money to keep the doors open.

In order to compete in the global marketplace, our companies have continually invested in our employees, and in new equipment and technology. We provide good paying life sustaining jobs and a

strong benefit plan to our employees, who are highly skilled in their craft and are the main reason PRL is successful today.

As an increasingly critical and growing supplier for our national defense, we are cautiously looking to expand our operations for the future. The fact is there are very few foundries remaining in the U.S. who are able to meet the high specifications standards required by our nation's military. However, we are reluctant to invest too much in our businesses, given our concerns over new and upcoming costly federal regulations which I highlight below.

We are already trying to cope with a significant increase in health care costs and now we are looking at additional regulations, which if imposed could easily cost us over one and half million dollars to implement with absolutely no guarantee that it will be effective. Of particular concern is our small foundry which only employs 13 people. The bulk of the regulations would hit our small foundry the hardest, and to put it bluntly as a small business owner we would need to determine if it is even worth the cost of compliance. This is tragic. Our company operates off of a credit line, and in order try to be in compliance we would have to attain a capital equipment loan, which we would much rather invest in purchasing new production equipment, which would create new jobs.

U.S. Foundry Industry is Critical to the U.S. Economy

The U.S. metalcasting industry is the sixth largest industry in America and the second largest supplier of castings in the world, after China. U.S. metalcasters ship cast products valued at more than \$20 billion annually and directly employ over 200,000 people.

Today, there are 1,965 operating casting facilities, which is down from 2,170 five years ago and, 3,200 plants in 1991. This reduction can be attributed to the recession, technological advances, foreign competition and tightening of federal, state and local regulations. Nearly 600 foundries produce iron and steel castings, while another 1,400 make aluminum, brass and bronze castings.

More than 90% of all manufactured goods and capital equipment use metal castings as engineered components or rely on castings for their manufacture. The industry produces both simple and complex components of infinite variety. From key components for aircraft carriers and automobiles to home appliances and surgical equipment, cast metal products are integral to our economy and our way of life.

The foundry industry is vital to the automotive and transportation sectors. In fact, automobiles, trucks, rail cars, and other transportation equipment utilize 38% of all castings produced in the U.S. These types of castings include engine blocks, crankshafts, camshafts, cylinder heads, brake drums or calipers, intake manifolds, transmission housings, differential casings, U-joints, suspension parts, flywheels, engine mount brackets, front-wheel steering knuckles, hydraulic valves, and a multitude of other castings.

Foundries are also the mainstay of national defense. All sectors of the U.S. military are reliant on metal castings for submarines,

jet fighters, ships, tanks, trucks, weapon systems and other vital components.

The industry is widely dispersed throughout the country, with the highest geographic concentration of facilities located in Ohio, Alabama, Pennsylvania, Indiana, Illinois, Michigan, California, Texas, and Wisconsin. In fact, Ohio is the leading metalcasting state in the nation.

Metalcasters are experts in making new, engineered components by re-melting old ones. Discarded appliances, sewer grates, water meters, automobiles, and other metal objects once destined for the landfill are valuable materials to our industry. In fact, our industry uses scrap metal for 85% of its feedstock for iron and steel castings. This practice results in the diversion of 15 to 20 million tons of material from disposal in domestic landfills every year.

Challenges Confronting PRL Inc & US Foundries

Manufacturers rely on a stable, balanced and common-sense regulatory environment to create jobs and fuel economic growth. However, the burden of unnecessarily costly rules weighs heavily on their ability to grow and create jobs. Federal regulation is estimated to cost more than \$2 trillion annually.

The burden of regulation falls disproportionately on small businesses and manufacturers. Dollars spent by manufacturers on regulatory compliance for unnecessarily cumbersome or duplicative regulations are dollars not spent on capital investment or hiring new employees.

Today, the metalcasting industry continues to face major roadblocks—by both the most intense global competition in our history and the increasing costs associated with new and upcoming federal regulations and other actions, including executive orders, by our government. American metalcasters need sound policies in taxation, energy, labor, trade, health care, education, infrastructure and, most certainly, regulation.

Highlighted below are some upcoming regulations that will significantly impact PRL and the foundry industry:

U.S. Department of Labor—Occupational Safety & Health Administration

AFS members, including our company, are highly committed to protecting their employees and developing and implementing sound policies that advance health and safety. AFS provides critical information and tools for its members to continuously improve their safety performance including in-plant consultation and safety courses. AFS publishes over 60 Health and Safety guides specific to the foundry industry. In addition, the association conducts an annual Safety Boot Camp and Environmental, Health and Safety Conference, as well as webinars on a variety of key foundry safety topics.

Our culture is one of “SAFETY FIRST”. PRL has a Safety Manager as well as Safety Leaders at each location. They provide safety

and health training for all employees on an ongoing bases. We have a safety committee, which is certified by the State of Pennsylvania, with representatives from every level of our organization, recommendations are encouraged and taken seriously, and more experienced workers are tasked with mentoring our younger co-workers. We send our personnel to outside safety conferences, including AFS' Safety Boot Camp, and have a contract with an outside safety consultant who is available 24/7 to answer any questions which may arise. PRL has also brings in outside safety consultants as needed, including experts from Indiana University of Pennsylvania.

However, of significant concern to the foundry industry is the Occupational Safety and Health Administration's (OSHA) proposed crystalline silica rulemaking.¹ In 2013, OSHA proposed a comprehensive and complicated new regulatory structure for the control of crystalline silica. Silica (quartz), one of the most common minerals on earth, has a critical role in a wide spectrum of the economy, including construction, energy, foundries and manufacturing, consumer goods, agriculture, transportation, and technology. The U.S. foundry industry uses and recycles millions of tons of silica sand per year to produce critical metal castings.

The proposed rule is potentially the most far-reaching regulatory initiative ever proposed. It would sharply reduce, by half, the existing permissible exposure limit (PEL) for crystalline silica. Not only will this require most foundries to spend an estimated million dollars on additional dust collection systems, but there is no guarantee that this standard can even be met. In addition to the significantly reduced PEL, OSHA's proposal includes requirements for regulated areas or written access control plans, prohibitions on work practices, medical surveillance, mandates extensive and costly engineering controls respiratory protection, training and hazard communication, and recordkeeping.

Key Foundry Concerns with OSHA's Proposed Silica Rulemaking:

- **Prohibits Certain Work Practices Which Contradicts Existing Industry Safety Practices.**

- OSHA bans dry sweeping, compressed air and employee rotation as control methods. For many foundries, compressed air is the only feasible method to clean complex castings, particularly when the parts are going to support our nation's defense. Wet vacuuming can damage equipment and create a significant explosion, which risks lives. Every foundry person knows you never introduce water in to a foundry environment, and yet this regulation requires it!

- Dismisses the use of personal protective equipment (PPE) as a primary approach to protecting employees; instead, relies on the outdated "hierarchy of controls" that emphasizes much more costly, disruptive, and often less effective, engineering and work practice controls.

¹U.S. Occupational Safety and Health Administration's proposed rule Occupational Exposure to Respirable Crystalline Silica, Sept. 13, 2013, Docket No. OSHA-2010-0034.

- **Underestimates and/or Completely Omits Cost of Equipment & Processes.**

A number of pieces of equipment and system costs, such as a new dust collector, which can easily run over \$1 million to install, were not accounted for by OSHA. Other examples include:

- Cleaning—professional cleaning would cost \$1 per square foot of facility, plus \$400 million a year for downtime.
- Ventilation—OSHA calculates annual cost of ventilation at \$5.33 per cubic feet per minute (CFM) vs. the foundry experience of more than \$20 per CFM, and completely omits engineering, air modeling and permitting costs.
- OSHA failed to consider the effects of compliance on current EPA regulations. Many foundries will be forced to redesign and install new ventilation systems. This will trigger a large number of foundries to make changes to their air permits, which can take at least a year to obtain from their states. OSHA's proposal provides just one year to come into compliance with the rule. In the case of PRL, if the permit cannot be attained we could conceivably be forced to shut down and over 150 hardworking co-workers would lose their jobs.

- **Is Not Technologically or Economically Feasible.**

- Dust control, especially at the low exposure levels OSHA is recommending, is challenging and complex. The sharply reduced PEL presents enormous feasibility challenges. Foundries will have to exhaust **all** feasible engineering and work practice controls to meet the new reduced PEL. There is not a one-size-fits all solution that is guaranteed to work. Some foundries may spend millions of dollars retrofitting and/or rebuilding in order to implement the various types of engineering controls (essentially trial and error) while attempting to comply with the standard. [Currently, protective equipment (e.g., respirators) or other measure may be used to keep workers' exposure below the PEL whenever engineering controls are not feasible.]
- There are certain operations, such as grinding and knock-off/sorting, where no matter how much is spent on controls, consistent compliance will not be achieved.

- **Utilizes Outdated SBREFA Report.**

- OSHA declined to conduct a second small business panel review under the Small Business Regulatory Enforcement Fairness Act (SBREFA), choosing to let stand the outdated 2003 report. Reliance on a report that solicited input on a different proposal a decade ago is simply not adequate outreach to the affected stakeholders. Furthermore, it raises serious concerns that OSHA has not used the best available data or techniques to quantify the costs and/or benefits of the rulemaking. As a member of both AFS and National Federation of Independent Business, I worked hard to get this law passed, and

now to see its original intent being totally disregarded is disheartening at best.

- **Fails to Examine the Adequacy of the Supply of Occupational Health Professionals.**

- There will be a need for a large number of industrial hygienists and labs in order for the impacted sectors to comply with the proposed regulation. There is a significant risk that the lack of available service providers or the resulting escalation in cost of their services will render compliance with the proposed rule within the schedule proposed by OSHA technically and economically infeasible. OSHA's proposal would require employers to achieve complete compliance with the proposed PEL within one year of the effective date of a final rule. Exposure assessment would be required within six months of the effective date despite the fact that OSHA's proposed laboratory testing standards have two years to come into compliance.

- **Drastically Understates Costs to Comply—Exceeds 9% of Foundry Industry's Revenue.**

- OSHA's estimated cost of the engineering/ancillary costs for the foundry industry is \$43 million. Economic analysts estimate the cost to be more than \$2.2 billion annually. This represents 9.9% of the foundry industry's revenue and 276% of its profits.

- Assumes the cost to comply with a new 50 PEL is the same as it is to reach the current 100 PEL. At these lower levels, it will be even more challenging and costly.

- Economic impact will disproportionately affect small foundries, since the majority of the industry employs less than 100 employees.

- These substantial costs for this rule alone make the foundry industry one of the most heavily impacted industry sectors among all those affected by the rule. As currently proposed, OSHA's rule will likely force some foundries to close, shift production offshore, and impact the long-term productivity, profitability and competitive structure of the metalcasting industry.

An economic analysis performed by engineering and economic experts estimate that the annual compliance costs of the rule will likely reach over \$5.5 billion for all industry sectors—manufacturing, construction, transportation, defense, and high-tech industries. Before moving to impose billions in costs on critical U.S. economic sectors, which OSHA estimates to employ about two million people, OSHA should significantly revise or abandon this rule-making in favor of a more logical, data driven approach to OSHA's goals. Significant progress has been made in preventing silica-related diseases under existing regulations, making proposed changes unnecessary.

OSHA has two immediate, effective means, to improve upon current protective practices, which it dismisses in the proposed regulation: (1) providing compliance assistance for current exposure limits, for which OSHA documents a roughly 30% non-compliance rate

across all impacted industries; and, (2) supporting new technology and policies favoring effective, comfortable, respirators and clean filtered air helmets, which provide full protection but are not favored by OSHA's outdated "hierarchy of control" policy. Unfortunately, the Agency prejudged this issue by announcing in the Federal Register that it would not consider changing that policy, no matter how effective, efficient and economical the protective devices.²

The Regulatory Flexibility Act (RFA) requires federal agencies take into account the small business economic impact during the rulemaking process. The goal of the RFA was to create a process by which the needs and priorities of small business are better taken into account early in the rulemaking process in an effort to eliminate a one-size-fits-all approach in drafting new regulations. It is clear that OSHA has disregarded the RFA's requirements as Congress intended and issued a one-size-fits-all silica proposal and failed to consider the costs of this comprehensive rulemaking on small business. AFS strongly supports the chairman's bill, the Small Business Regulatory Flexibility Improvements Act of 2015 (HR 527), which would close these RFA loopholes and ensure that all federal agencies appropriately consider the impact of their rules on small businesses.

There are number of other U.S. Department of Labor and OSHA regulations that have been issued recently which I highlight in Attachment B which will impact foundries and other key industry sectors.

U.S. Environmental Protection Agency

We are alarmed by a wave of new regulations that the U.S. Environmental Protection Agency (EPA) is imposing on the utility sector, despite greenhouse-gas emissions falling significantly in the U.S. As an energy-intensive industry, metalcasters are troubled by the increased electricity costs and reliability issues that will likely result from these new regulations.

U.S. foundries cannot produce castings without adequate and affordable supplies of natural gas and electricity. For many metalcasters, energy is a key expense, only behind raw materials and labor in terms of costs of doing business. Melting is the most energy-intensive operation in metal casting operations, accounting for about 55% of the total energy use. Compared to other foundry sectors, energy costs are highest in iron foundries, since the melt temperature is much higher for this metal.

Continued access to affordable energy sources help foundries better compete against growing global competition and allow us to keep and create more jobs.

Unfortunately, over the last two years, there are numerous specific examples of regulations and proposed rules by EPA that have

²78 FR 56274, 78: "OSHA would like to draw attention to one possible modification to the proposed rule, involving methods of compliance, that the Agency would not consider to be a legitimate regulatory alternative: To permit the use of respiratory protection as an alternative to engineering and work practice controls as a primary means to achieve the PEL."

a particularly burdensome impact on our industry, with little regard for their impact on job creation and the manufacturing supply chain. There also seems to be no recognition of the cumulative impact of these regulations. I have highlighted just three EPA proposed regulations in my testimony, but have attached a much more detailed list of the regulations developed by EPA in recent years that will directly or indirectly impact the foundry industry, as well as the entire manufacturing sector. [See Attachment B.]

In June of 2013, President Obama issued an executive memorandum directing the EPA to promulgate regulations to limit carbon emissions from both new and existing power plants. The memorandum called for the EPA to propose two regulations: a regulation for new power plants, and a similar regulation for existing power plants.

These proposed regulations are the first among a suite of follow-on rules that would impact many industries twice—both as electricity customers and as industries next in line for subsequent regulations. It is critical that the Obama Administration adopt a more reasonable approach, promoting policies that support a true all-of-the-above energy strategy and allow manufacturers the flexibility to continue unlocking solutions for a sustainable economy and environment.

- **EPA's Proposed Rule for New Power Plants**

The proposed regulation bans the construction of new coal-fired power plants unless they are equipped with a technology known as carbon capture and sequestration (CCS). CCS is a promising system that would capture, transport and then store carbon underground. However, CCS is prohibitively expensive and not in use at a single commercial-scale power plant in the country. Given this restriction, the practical impact of the EPA's proposed regulation for new power plants will be to block construction of coal-fired power plants in this country. A final regulation is expected this summer.

- **EPA's Proposed Clean Power Plan**

In June 2014, EPA proposed a new rule to cut carbon dioxide emissions by a total of 30% from existing power plants by 2030 compared with 2005 levels. Unlike the new power plants regulation, the existing power plants regulation will impact plants that are already supplying electricity to homes and businesses throughout the country. The United States relies on fossil fuels for about 68 percent of the electricity that keeps the lights on in our homes and businesses. Quite simply, our country cannot operate without electricity from fossil fuels. Yet, this regulation threatens to shut down many of the plants that produce this low-cost, reliable electricity. For consumers, foundries and other manufacturers that could mean sharply higher electricity prices for everyone. Second, the steady stream of electricity that we depend on will be threatened.

Since state laws allow the electric providers to pass all energy and environmental compliance costs through to the consumer, we expect our energy prices to increase substantially. Even a \$0.01/

kWh increase in the cost of electricity imposes additional costs of nearly \$9 billion per year on domestic manufacturing facilities. A final regulation is expected to be issued in the summer of 2015 and will require states to issue implementation plans to meet the EPA's requirements by 2016.

These GHG regulations have great potential to be devastating economically, increasing energy costs for every sector of the economy, and driving up the costs of goods and services.

- **EPA's Ozone National Ambient Air Quality Standards**

The other proposed rule I want to mention is EPA's National Ambient Air Quality Standard (NAAQS) for ground-level ozone. In March 2008, the EPA lowered the 8-hour primary NAAQS for ozone to its current level of 75 parts per billion (ppb). In November 2014, the EPA proposed lowering the ozone standard to a range between 65 to 70 ppb. By court order, the Agency must finalize the standard by October 1, 2015.

Key Problems with the Proposed Ozone Rule:

1. Will Affect Much of the Country - Lowering the standard from 75 ppb to a range of 65 to 70 ppb could cause large parts of the country to fall into **nonattainment**. Counties and areas classified as nonattainment can suffer stringent penalties; including: (a) EPA overriding states on permitting decisions; (b) new facilities and major modifications having to install the most effective emission reduction technologies without consideration of cost; and (c) federally supported highway and transportation projects being suspended.

2. Has Significant Economic Consequences - According to a February 2015 economic study undertaken by the National Association of Manufacturers, a **65 ppb** standard could reduce U.S. GDP by **\$140 billion**, result in **1.4 million fewer jobs**, and cost the average U.S. household **\$830 in lost consumption** - each year from 2017 to 2040. That would mean a total of \$1.7 trillion in lost U.S. GDP during that time period.

3. May Be Impossible to Achieve Compliance - According to EPA's Clean Air Scientific Advisory Committee (CASAC), EPA "is not clear as to how background estimates might impact the primary and secondary standards and whether these impacts may differ regionally. Also, EPA does not consider the impact of international border pollution; ozone and other pollutants are transported to the U.S. from other countries, thereby causing states and counties to be nonattainment.

4. Current Standard Not Fully Implemented - EPA's 2008 ozone standard (75 ppb) still has not been fully implemented. States did not even find out which of their counties would be designated as nonattainment under the 2008 standard until April 2012. Additionally, EPA did not finalize the necessary implementation regulations and guidance for the 2008 standard until just recently in February 2015. States are committing time and money to meet the 2008 ozone standard. Yet if EPA moves forward with its proposal to further reduce the ozone standard it fails to give states

a chance to meet the current ozone where states already have limited resources for implantation. At this time, AFS believes EPA should retain the current standard. Yet EPA now wants to move the goal posts in the middle of the game.

Regulatory Reform Needed

AFS believes there is an appropriate role for regulation, but regulations promulgated without an analysis of the impact on the economy, in particular small businesses, and the impact on jobs, including how multiple regulations compound those impacts, can have quite the opposite effect. If manufacturing is to continue to make a significant contribution to the 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.

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.

AFS and its members have a keen interest in getting regulations right. 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, particularly on small business. 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 input from the affected regulated community before developing a proposed regulation. It does to the win-win that is possible from an early engagement, so that the public, the government, and the regulated community all benefit.

AFS 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. If our regulatory agencies are capable of assessing the cumulative benefit of their regulatory programs, surely they are capable of assessing the cumulative burden.

Conclusion

PRL understands and supports the need for reasonable regulations to protect the environment, worker safety and health. To continue manufacturing momentum and promote hiring, the nation needs not just improved economic conditions, but also government policies more attuned to the realities of global competition. The key is to find the balance between ensuring a safe and healthy workplace and allowing that workplace to compete in order to be able

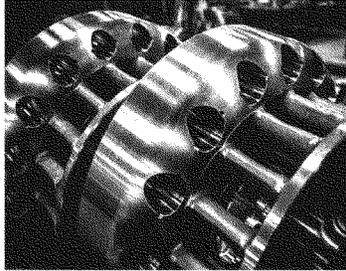
to continue to provide employment; that is where the current U.S. regulatory process is lacking. My fear for the industry is that we may lack the ability to meet many of these regulations which will force more foundries to shut down. This will not only cost the U.S. jobs, but could threaten our nation's military supplier base, and would ironically cause more pollution in the world!

The cumulative burden of a variety of new and proposed standards is nearing a tipping point. More than ever, 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 on businesses, particularly small businesses, as well as the manufacturing supply chain. Pro-growth policies will make our nation a more competitive place to do business.

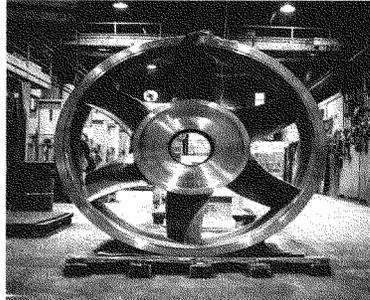
In this current economy, it is clear that cost-ineffective regulations and increases in taxes dampen economic growth and will continue to hold down job creation. For some foundries, it will be the final stake in their coffin. Thank you again for the opportunity to appear before you today. I would be happy to respond to any questions.

Attachment A - Example of Castings Manufactured by PRL Inc.
Attachment B - Key Regulations Impacting the Foundry Industry

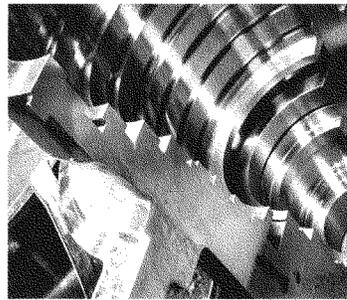
ATTACHMENT A - EXAMPLES OF CASTINGS MANUFACTURED AT PRL, INC.



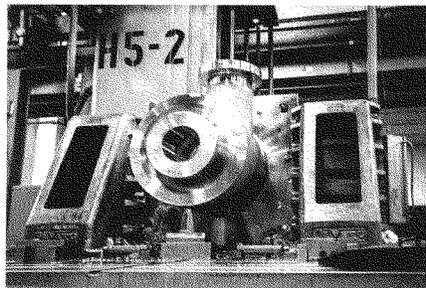
INNER CASING COVER FOR SUBMARINE
- STAINLESS STEEL -



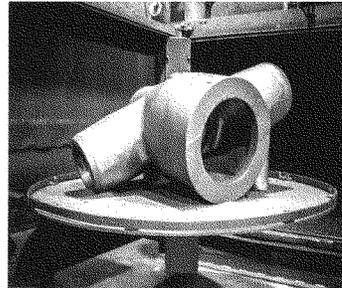
VERTICAL DIFFUSER FOR THE COOLANT SYSTEM
OF A POWER PLANT
- CN3MN -



STEAM CHAMBER FOR SUBMARINE
- STAINLESS STEEL -



PUMP CASING FOR SUBMARINE
- COPPER NICKEL -



VALVE BODY FOR CARRIER
- CARBON STEEL -

ATTACHMENT A – Federal Rules Impacting U.S. Foundry Industry

Environmental Protection Agency

These regulations on air emissions and water will severely harm economic growth. Manufacturers need sensible and flexible regulations.

- **EPA Utility Maximum Achievable Control Technology (Utility MACT) Rule**
This air quality regulation for coal-fueled power plants finalized by the Environmental Protection Agency (EPA) on December 16, 2011. It will place limits on the emissions generated by coal fired electric generating units and will create increases in the price of electricity. The Utility MACT alone, will be one of the most expensive rules the agency has ever issued for the power generating sector, expected by EPA to cost \$10.9 billion in the year 2015; \$10.1 billion in 2020; and \$10 billion in 2030. It will require utilities to install pollution control technology in a very short compliance window. There are widespread concerns that electric reliability could be threatened because the new rule would force the premature retirement of many coal-fired power plants. **Final Rule - 2011**
- **EPA Cross State Air Pollution Rule (CSAPR)**
Issued on July 7, 2011, the CSAPR sets stringent additional power plant emission limits for 27 states and calls on both states and affected facilities to comply with the new rules by January 1, 2012. Manufacturers are concerned that the new rules will trigger higher energy prices, compromise grid reliability and lead to more job losses, threatening global competitiveness. - EPA's conservative modeling estimates that implementing the rule could cost up to \$800 million annually with \$1.6 billion per year in additional capital investments, for a total of \$2.6 billion per year by 2014. **CSAPR Phase 1 implementation is now scheduled for 2015, with Phase 2 beginning in 2017.**
- **EPA New Source Performance Standards (NSPS) for New Power Plants**
In 2014, EPA proposed a greenhouse gas (GHG) regulation for new power plants that would substantially limit the sources of energy available to power U.S. manufacturing. The first in a suite of impending GHG regulations, this rule would effectively ban the construction of new coal-fired power plants in the United States by requiring them to be equipped with carbon capture and sequestration (CCS) systems. While CCS is a very promising technology, it is prohibitively expensive and is not in use at a single commercial-scale power plant in the country. To remain competitive in a global economy, manufacturers need an "all-of-the-above" energy strategy to ensure they have access to affordable and reliable energy. **Final Rule – Summer 2015.**
- **EPA'S Clean Power Plan Rule**
Last June 2014, EPA proposed a greenhouse gas (GHG) regulation for existing power plants that would substantially limit the sources of energy available to power U.S. manufacturing. This rule would increase electricity prices for consumers across the country and ultimately threaten manufacturers' competitiveness. It would substantially reduce use of coal fired generation. Coal fired power is a low cost and reliable source of electricity. Manufacturers ultimately will be hit twice by EPA's greenhouse gas regulations, both as users of the energy being regulated and as industries considered "next in line" to receive similar regulations from EPA for their own plants. The decisions the EPA makes in these regulations—such as mandating technologies that are not yet commercially feasible—will have far-reaching consequences not only on our energy supply but also on the operations of foundries and all manufacturers. **Final Rule – Summer 2015**
- **EPA Ozone Rule**
EPA has officially proposed revising the current standard from 75 parts per billion (ppb) to the far more stringent 65 ppb, With an estimated cost to the economy of \$140 billion per year, the

proposed revisions to the ozone standard represent one of the most significant threats, not just to our manufacturing sector, but to the economy at large. **Final Rule – October 2015**

- **EPA & Corps of Army Engineers - Waters of the U.S.**

In April 2014, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) published a proposed rule expanding the definition of “waters of the United States.” The new definition of “waters of the United States” is both ambiguous and expansive, and would have a significant impact on manufacturers’ ability to operate, maintain and expand their facilities. This proposed rule would create unnecessary delays and costs for manufacturers of all sizes and in virtually all sectors, and could force manufacturers to have to obtain permits for a wide range of waters that were not previously required, leading to substantially higher permitting costs and lengthy project delays. **Final Rule – 2015.**

U.S. Department of Labor & Occupational Safety and Health Administration

- **OSHA: Improve Tracking of Workplace Injuries and Illnesses**

On November 8, 2013, OSHA published a proposed rule to amend its current recordkeeping regulations to add requirements for the electronic submission of illness and injury records employers are required to keep under Part 1904. On August 14, 2014, OSHA published a supplemental notice of proposed rulemaking to explore adding provisions that will make it a violation for an employer to discourage employee reporting. **Final Rule - August, 2015.**

- **OSHA: Occupational Exposure to Crystalline Silica**

On September 12, 2013, the proposed revised silica dust standard was published in the *Federal Register*. Administrative hearings were held beginning on August 18, 2014. All comments, and post-hearing comments have been submitted. **Final Rule – 2016.**

- **OSHA: Hazard Communication Global Harmonized System (GHS)**

In March 2012, OSHA revised its hazard communication standard to align it with the United Nations’. OSHA has mandated that all affected workers must be trained to read and understand the new safety data sheets and chemical labels. Employers storing, using or handling chemicals must provide workers with compliant GHS training before Dec. 1, 2013. Until the new standard takes effect in 2015, labels and safety data sheets adhering to either the current standards or the new standards will be considered acceptable. Employees need to know how to use the new documentation; however, employers are not required to maintain two sets of labels and safety data sheets for compliance purposes. Employers must update workplace labeling and their hazard communication programs as necessary, including additional employee training for newly identified chemical hazards – June 1, 2016.

- **Fair Pay and Safe Workplaces Executive Order**

Last July the President issued the “Fair Pay and Safe Workplaces” Executive Order (EO), which could exclude certain contractors and subcontractors from doing business with the Federal government due to allegations of federal and state labor law violations. The Federal Acquisition Regulation (FAR) Council is expected to issue a proposed rule and the Department of Labor (DOL) will issue guidance on the EO this spring. The EO could essentially exclude contractors and/or their subcontractors from doing business with the government even if there is a mere allegation that a company has violated a labor law. This could affect the status of hundreds of contractors and in turn, who they do business with, when performing work for the federal government. **Final Rule – 2015.**

Statement of Viktor Anderson
Structural Concepts Corporation
U.S. House Committee on Small Business
March 18, 2015

Mr. Chairman and Members of this Committee, I appreciate the opportunity to testify today on behalf of Structural Concepts Corporation and the Air Conditioning, Heating, and Refrigeration Institute (AHRI). Structural Concepts was founded in 1972, is located in Muskegon, Michigan and is a manufacturer of both remote and self-contained commercial refrigeration equipment. In terms that are likely more familiar to you, we are a company that makes the refrigerated merchandiser or display that you would find at your local grocery store or restaurant. Our products ensure that food is stored safely and is accessible in all corners of our country, from mom and pop bodegas to the largest supermarket chains.

AHRI is the trade association representing manufacturers of HVACR and water heating equipment. AHRI's 315 member companies manufacture quality, efficient, and innovative residential and commercial air conditioning, space heating, water heating, and commercial refrigeration equipment and components for sale in North America and around the world, and they account for more than 90 percent of HVACR and water heating residential and commercial equipment manufactured and sold in North America.

Like so many small businesses across the country, Structural Concepts is deeply rooted in our community. Our friends, our neighbors and our town depend on the jobs we provide. Unfortunately, as suggested by the title of today's hearing, small businesses like ours are facing significant new regulatory burdens from federal agencies. The agencies often show little regard for the impact new requirements can have on our business' ability to stay afloat and continue creating these quality jobs.

Today, I would like to draw the Committee's attention to two recent regulations (one finalized, one proposed) that will have a particularly deleterious impact on Structural Concepts and our employees:

- (1) the U.S. Department of Energy's (DOE) revision to energy conservation standards for commercial refrigeration equipment, and
- (2) the U.S. Environmental Protection Agency's (EPA) change of listing status for certain refrigerant substitutes under the Significant New Alternatives Policy (or SNAP) Program.

Taken together, these two regulations will severely impact Structural Concepts' ability to retain our current level of employees and to economically produce cost-effective, energy efficient and environmentally friendly refrigeration products.

EXECUTIVE ORDER 13563

In 2011, like other companies across the Nation, we were heartened by President Obama's issuance of Executive Order 13563, which was designed to improve regulations and regulatory review across the Federal government. President Obama directed each Federal agency to "propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs" and to "tailor its regulations to impose the least burden on society...taking into account, among other things, "the costs of cumulative regulations". Concurrently, he issued a memorandum on "Regulatory Flexibility, Small Business, and Job Creation" that directed agencies to comply with an existing law, the Regulatory Flexibility Act. As you know, the RFA requires agencies to examine the impacts of regulations on small businesses and seriously consider how to reduce regulatory burdens through flexible approaches such as extending compliance deadlines, simplifying reporting and compliance requirements, or providing different requirements for small firms.

Unfortunately for Structural Concepts and many others, Federal agencies have simply not abided by these extremely important principles in their rulemakings. For example, under the Regulatory Flexibility Act review, the final rule for Energy Conservation Standards for Commercial Refrigeration Equipment clearly states that "the average small manufacturer is expected to face capital conversion costs that are nearly five times typical annual capital expenditures." While capital conversion costs for large manufacturers are predicted to be 49 percent of annual capital expenditures, the review clearly states, "an average small manufacturer's conversion costs are expected to be 278 percent of annual capital expenditures." Despite the resulting difficulty in obtaining credit, increases in component costs and disadvantageous rise in sale prices, the DOE did not truly examine any alternative approaches to reduce the significant economic impacts on small businesses.

As a result, small businesses like ours are burdened by multiple regulations that either contradict each other, have a high level of difficulty or are simply physically impossible to comply with in the given amount of time. We simply do not have resources to mount legal challenges and are therefore largely left to shoulder the resulting economic burden placed on our industry.

DOE'S ENERGY CONSERVATION STANDARDS FOR COMMERCIAL REFRIGERATION EQUIPMENT

As part of its energy efficiency rulemaking program, DOE promulgated energy conservation standards for commercial refrigeration equipment. In 2009, DOE issued an initial set of standards with a compliance date for industry of 2012. Between 2009 and 2012, Structural Concepts expended a significant amount of resources to comply with DOE's rules. Thousands of hours of research and development, engineering, testing, supply chain and manufacturing work went into this effort. For example, we scaled up an existing technology to eliminate 99% of the electric condensate pans used to remove meltwater from the defrost cycle. This alone accounted for a 30-40% energy reduction in our self-con-

tained equipment. We improved the efficiency of our heat exchangers by enlarging them and using rifled tubing. We incorporated energy efficient compressors and motors. This all had to be developed first with initial verification through R&D testing. Then the implementation work began. All this new technology had to be engineered into over 400 existing models. Condensing units had to be developed for multiple product lines. Machine compartments needed to be either resized or reconfigured. Refrigeration systems for each case had to be rebalanced and it doesn't stop there. The two most important regulations to Structural Concepts had to be re-applied for all of our products. These would be product and food safety regulations that ensure we continue to maintain the health and well-being of our customers and end users. This was done through the compliance with Underwriters Laboratory and National Sanitation Foundation standards. In addition to safety testing, additional energy testing was also performed for DOE compliance.

To accomplish all of this we had to dedicate several engineers that would otherwise be customizing or developing products to increase sales and grow our company. We had to increase our capacity, accuracy and throughput of our test labs. We had to develop new manufacturing processes and supply chains to produce our own condensing units. In the end, we reduced our energy/carbon footprint of our entire self-contained product offering by approximately 50%. We felt proud of the fact that we complied with the new DOE energy levels and in most cases went above and beyond, only to find out it wasn't enough. Last year, only two years after the compliance deadline for the old rules, DOE again issued even more stringent energy efficiency criteria. Unfortunately, the new standards, which have to be met by 2017, obviate many of the investments that were made to comply with the 2012 rule. Quite simply, DOE is not giving small businesses the Structural Concepts time to breathe between one rulemaking and the next.

In developing their final rule, DOE employed questionable assumptions about the feasibility and economic viability of several technological options that were included in the standards-setting process. In some cases, DOE went so far as to require energy savings in excess of *Energy Star* levels, which is supposed to be a designation for products that go above-and-beyond industry norms. They verified their new energy levels in some cases with only a single data point. There are so many configurations for each equipment class I don't know how they justified this. On the other hand, we, as manufactures, are required to have multiple data points if we want to use an alternative efficiency determination method (AEDM) to minimize the testing burden. DOE seems to be setting standards that utilize all of the most efficient technology in existence all at once, something we refer to as "max-tech." Forcing our entire industry to adopt max-tech in a few short years is an extremely expensive way of incentivizing savings that will probably backfire. In fact, DOE's demands are so onerous that many industry participants have decided their best recourse is to file a lawsuit against the agency's final rule.

To comply with DOE's new 2017 standards, Structural Concepts will again have to re-engineer many of our product components and cabinet designs, conduct new rounds of tests mentioned above, and potentially revamp our manufacturing processes. All of these activities will again sap resources that would otherwise be used towards innovation and product development, and will result in an increased price for our customers.

EPA'S CHANGE OF LISTING FOR CERTAIN SUBSTITUTES UNDER THE SNAP PROGRAM

The EPA's SNAP program is the agency's regulatory apparatus for phasing out ozone-depleting chemicals. The EPA proposed a rule last year that will take away the current refrigerant used in all of refrigerated systems on January 1st, 2016 (9 months from now). The alternative refrigerants they proposed are both highly flammable and, therefore, limited in the amount useable in each system. Ironically, many are actually less energy inefficient when used in our applications. The result they would have significantly raised the energy consumption and caused noncompliance to the DOE regulations. In fact, 60 percent of the display cases that we manufacture would not have complied with EPA's new rules until they approved a new refrigerant. EPA approved the use of R450A, the day after comments were due.

To make matters worse, R450A still has its challenges. The supply chain for this refrigerant will take time to develop. Production for the new gas will have to be scaled up. Compressors will have to be tested for safety and reliability. In some applications, the physical size of the compressor will increase to achieve the same refrigeration effect. This will require the machine compartment of each model to be reviewed for redesign. This of course is after each refrigeration system for all models are redesigned for balance. Again, all of the safety testing will need to be redone along with energy usage verification at great expense. In our response to EPA, Structural Concepts informed EPA that the agency's proposed rule would result in more than half of our employees being permanently laid-off.

Herein lies a new problem. When are we supposed to do all of this work? The DOE is requiring us to comply with the new energy levels on January 1st, 2017. The EPA is proposing compliance to their new rules on January 1st, 2016. (Again, only 9 months away). Let's assume that for obvious reasons that date will be extended out. Will we be required to comply with the new EPA rules in 2018? 2019? Currently we need to re-engineer our entire product offering to meet new energy levels by 2017. Then will we need to do it all over again a year or two later? The DOE is mandated to review energy levels every five years. This means that in 2022 we have to review our product yet again.

My point is, if the DOE and EPA do not coordinate their efforts, we could potentially be redesigning our product every two to three years for more than 12 years in a row. When DOE determined that its new energy efficiency standards were feasible, the agency did not account for EPA's new restrictions on allowable refrigerants.

Combined, the two rules will devastate our industry. Agency rules, as currently finalized, will operate at cross-purposes to one another and fail to accomplish their aims; all while reducing economically productive activity in our sector.

The aggregate effect of the regulatory burdens being placed on the commercial refrigeration industry will not be limited to damage suffered by Structural Concepts. By increasing the cost of display cases and other refrigeration technology that so many Americans depend on for their groceries, the Administration risks increasingly placing fresh food out of reach for the average consumer. Many of the grocers who use our display cases are also small businesses, who can ill-afford the additional cost of more expensive refrigeration units. Furthermore if certain equipment classes are made obsolete due to technical and timely infeasibility, the billions of dollars of product not sold through this equipment will have a major economic impact on both major corporations and small mom and pop retailers.

CONCLUSION

My purpose here today is to draw the Committee's attention to the undue burdens faced by small businesses everywhere by the unrealistic rules that federal agencies promulgate without adequate regard for practicality. The reality of these regulations, both specifically designed to address the commercial refrigeration industry, will not only increase our costs, but will force Structural Concepts to reduce the number of products manufactured, throw uncertainty into the current and future products offered and, overall, result in reduced employment. We are not a large corporation with a plethora of resources to redirect towards the review, testing and compliance of new rules. We are a small innovative manufacturer that makes refrigerated display cases, hardly the nexus point of the Nation's energy and environmental policy battles. Our company and thousands of companies like ours across the Nation, make a big difference in the stability of the nascent economic recovery which has only just begun to take hold. With its never-ending wave of new rules and ever-more-strigent standards, the Administration is threatening our ability to do business and provide critical products to American consumers.



TESTIMONY

James Goodwin
Senior Policy Analyst, Center for Progressive Reform (<http://www.progressivereform.org/>)

before the

**Committee on Small Business
U.S. House of Representatives**

Hearing on

Tangled in Red Tape: New Challenges for Small Manufacturers

March 18, 2015

Mr. Chairman, ranking member Velázquez, and members of the committee, I appreciate the opportunity to testify today on why ensuring a robust regulatory system is both necessary to and consistent with a strong economy in which smaller manufacturers can prosper and thrive.

I am a Senior Policy Analyst at the Center for Progressive Reform (CPR). Founded in 2002, CPR is a network of sixty scholars across the nation dedicated to protecting health, safety, and the environment through analysis and commentary. It has a small professional staff primarily funded by foundations. I have had the privilege of working as a member of this staff since 2008, during which time my portfolio has included regulatory policy and process, scientific integrity in government decision-making, and citizen access to the courts.

In my testimony today, I will make three points related to the hearing topic:

1. Regulations are essential for safeguarding the public. The Occupational Safety and Health Administration's (OSHA) silica rule provides a clear illustration. Once completed, this rule would save up to 700 lives and prevent up to 1600 new cases of silicosis every year.
2. Regulations can and do provide important economic benefits for smaller businesses, including those in the manufacturing sector.
3. The Small Business Administration's (SBA) Office of Advocacy is supposed to be helping small businesses on regulatory matters, but in fact works directly against their interests.

Based on these three points, I will conclude by proposing an alternative approach to balancing public safeguards and the unique interests of real small businesses. We can help small

businesses and have strong public protections all at the same time. We do not have to choose between them. The path forward should focus on “win-win” regulatory solutions that involve finding ways to help small businesses meet their regulatory obligations but without undermining their ability to compete.

Regulations are Essential for Protecting the Public

Over the past four decades, U.S. regulatory agencies have achieved remarkable success in establishing safeguards that protect people and the environment against unreasonable risks. During the 1960s and 1970s, rivers caught fire, cars exploded on rear impact, workers breathing benzene contracted liver cancer, and chemical haze settled over the industrial zones of the nation's cities and towns. But today, the most visible manifestations of these threats are under control, millions of people have been protected from death and debilitating injury, and environmental degradation has been slowed and even reversed in some cases. In short, the United States is much better off because of the regulations adopted over the past 40 years. But serious hazards remain, and indeed new ones continue to emerge as new technologies develop and the U.S. economy evolves. Americans would be even better protected if the gaps that leave them and their environment vulnerable to unnecessary risks were closed.

To gauge the positive impact of regulation on Americans' lives, consider:

- The White House Office of Management and Budget (OMB) estimates that regulatory benefits exceed regulatory costs by about 8 to 1 for significant regulations.¹ The Environmental Protection Agency (EPA) estimates that the regulatory benefit of the Clean Air Act exceeds its costs by a 25-to-1 ratio.²
- The failure to regulate some hazards related to the workplace, the environment, product safety, food safety, and more, and the failure to enforce existing regulations on such hazards results in thousands of deaths, tens of thousands of injuries, and billions of dollars in economic damages every year. Sometimes, the damages are spectacular on a world-wide scale. The BP Oil Spill caused tens of billions of dollars in damages.³ The Wall Street collapse may have caused trillions. Regulation to prevent catastrophe can be far cheaper, and less painful, than cleaning up damage to lives, property, and the environment later.⁴

¹ OFFICE OF MGMT. & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, DRAFT 2014 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES 11, *available at*

https://www.whitehouse.gov/sites/default/files/omb/inforeg/2014_cb/draft_2014_cost_benefit_report-updated.pdf.

² ENVTL. PROTECTION AGENCY, THE BENEFITS AND COSTS OF THE CLEAN AIR ACT FROM 1990 TO 2020, 7-9 (Mar. 2011), *available at* <http://www.epa.gov/oar/sect812/feb11/fullreport.pdf>.

³ See Aaron Smith, *BP: We've Spent \$2 Billion on Clean-Up*, CNNMONEY, June 21, 2010, *available at* http://money.cnn.com/2010/06/21/news/companies/bp_oil_spill/index.htm. In June of 2010, Credit Suisse predicted that the total costs would be around \$37 billion, with \$23 billion in clean-up costs and \$14 billion in settlement claims. Linda Stern, *Gulf Oil Spill Could Cost BP as Much as \$37 Billion*, MONEYWATCH.COM, June 8, 2010, *available at*

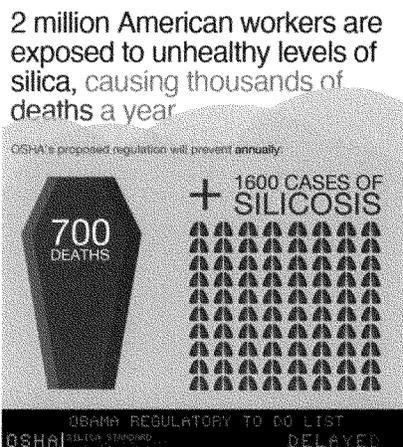
<http://moneywatch.bnet.com/economic-news/blog/daily-money/gulfoil-spill-could-cost-bp-as-much-as-37-billion/728/>.

⁴ OFFICE OF MGMT & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, FISCAL YEAR 2012: ANALYTICAL PERSPECTIVES: BUDGET OF THE U.S. GOVERNMENT 47 (2011), *available at*

- Dozens of retrospective evaluations of regulations by the EPA and OSHA have found that the regulations were still necessary and that they did not produce significant job losses or have adverse economic impacts for affected industries, including small businesses.⁵

Individual examples of regulatory successes paint an even more compelling portrait. The EPA estimates Clean Air Act rules saved 164,300 adult lives in 2010, and will save 237,000 lives annually by 2020. The National Highway Traffic Safety Administration's vehicle safety standards have reduced the traffic fatality rate from nearly 3.5 fatalities per 100 million vehicle miles traveled in 1980 to 1.41 fatalities per 100 million vehicle miles traveled in 2006. An Endangered Species Act recovery program developed by the U.S. Fish and Wildlife Service helped increase the Bald Eagle population from just 400 nesting pairs in 1963 to 10,000 nesting pairs in 2007, enabling the Service to remove Bald Eagles from the Endangered Species List.⁶

The rules that the federal protector agencies are currently working on will add to this impressive track record. A case in point is OSHA's pending rule to protect workers against harmful silica exposures that might occur in the work place. Roughly 2 million U.S. workers in dozens of different industries toil in workplaces with silica levels high enough to threaten their health. As the dust swirls through workers' lungs, it causes lung tissue to swell and become inflamed. Workers experience difficulty breathing and, over time, develop scarring and stiffening of the lungs. The resulting condition, called silicosis, is debilitating, and the lung damage that comes with it can increase a person's risk of tuberculosis and lung cancer. OSHA estimates that thousands of workers die every year because of silica exposures that are *within the current legal limits*, which were set more than 40 years ago. These workers suffer just the same—whether they work for a smaller business or a larger one.



www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/spec.pdf. The Congressional Budget Office (CBO), which employs a different methodology for calculating costs than does the OMB, estimates the costs of TARP to be \$19 billion. CONG. BUDGET OFFICE, REPORT ON THE TROUBLED ASSET RELIEF PROGRAM—MARCH 2011, 1 (2011), available at <http://www.cbo.gov/ftpdocs/121xx/doc12118/03-29-TARP.pdf>. See also BARBARA BUTRICA, KAREN E. SMITH, & ERIC TODER, HOW WILL THE STOCK MARKET COLLAPSE AFFECT RETIREMENT INCOMES? 1 (The Urban Institute, Older Americans' Economic Security Report No. 20, 2009), available at http://www.urban.org/uploadedpdf/411914_retirement_incomes.pdf.

⁵ Sid Shapiro et al., *Saving Lives. Preserving the Environment. Growing the Economy: The Truth About Regulation* 10, 20-30 (Ctr. for Progressive Reform, White Paper 1109, 2011), available at http://www.progressivereform.org/articles/RegBenefits_1109.pdf.

⁶ *Id.* at 5-6.

Once in place, OSHA's pending silica proposal is expected to save up to 700 lives and prevent up to 1600 new cases of silicosis every year. This rulemaking has been in the works for over 17 years now, and the cost of these unnecessary delays has been thousands of deaths and debilitating illnesses that weren't prevented, but could have been. The proposal would update OSHA's outdated exposure limits for crystalline silica with a comprehensive rule that would require employers to limit their workers' exposure to silica dust and provide other protections including exposure monitoring and free medical exams when workers are exposed to dangerous levels of the dust.

Regulations Often Provide Economic Benefits for Small Businesses

The economic benefits of regulation for businesses can be significant, but are all too often overlooked. First and foremost, businesses receive a significant productivity dividend when their workers and their workers' families are healthy and safe. Public health and environmental regulations in particular have been vital in reducing "lost work" days and "restricted activity" days that can undermine a business's productivity—and by extension its competitiveness and profitability. For example, the EPA estimates that its Clean Air Act regulations prevented 13 million lost work days and 84 million restricted activity days in 2010.

Second, regulations can help to create new markets and opportunities for entrepreneurs. Energy efficiency regulations provide a good example. Already these standards are pushing American companies to develop more energy efficient products at lower costs. As a result, these products are now and will continue to be attractive both domestically and in foreign markets for consumers and businesses that desire to save money on their electricity bills and work on cutting down on their carbon footprints. Indeed, these standards can even help to ensure that American businesses are well-positioned to be the world's leader in manufacturing energy efficient products.

Regulations of toxic chemicals provide another example. The efforts of the EPA, OSHA, the Consumer Product Safety Commission, and other protector agencies to safeguard people and the environment against harmful exposures to BPA, phthalates, and other potentially endocrine-disrupting substances are spurring innovative technology startups to develop less harmful alternatives. The work of these firms and other high tech startups can provide the foundation for a whole new era in the chemical manufacturing industry—one that is based on safer and environmentally friendlier technologies.

Third, regulations can even spur businesses to revolutionize their production processes in ways that leads to great productivity and profitability. In 1978, OSHA issued the Cotton Dust rule to protect workers from harmful exposures to cotton dust, which can cause byssinosis (or "brown lung" disease). Much like silicosis, brown lung disease is debilitating and potentially fatal disease that significantly impairs lung function. OSHA found that the number of byssinosis cases among textile workers in the country declined from approximately 50,000 in the early 1970s to around 700 in the mid-1980s, a decline of 99 percent.⁷ Significantly, though, the

⁷ OCCUPATIONAL SAFETY & HEALTH ADMIN., OFFICE OF PROGRAM EVALUATION, REGULATORY REVIEW OF OSHA'S COTTON DUST STANDARD II, 28-33 (2000), available at https://www.osha.gov/dea/lookback/cottondust_final2000.pdf.

investments these companies made in new equipment to comply with the rule also served to increase the industry's productivity and profitability. Indeed, in a 2000 retrospective review of the rule that OSHA conducted pursuant to the Regulatory Flexibility Act, the agency found that in the years prior to the rule's full implementation, the industry's productivity rate grew at a rate of roughly 2.5 percent. In the years after, however, the productivity growth rate had increased to 3.5 percent.⁸

Fourth, as recent episodes illustrate, when industrial-scale catastrophe results from a failure to regulate adequately, the attendant costs tend to fall disproportionately on small businesses. Think of all the small restaurants and cafés in Charleston, West Virginia, that had to close their doors for several days or even weeks following the 2014 spill of MCHM into the Elk River. Or think of all the small hotels, charter fisherman, and souvenir shop owners that were devastated by the ongoing fallout from the 2010 Gulf Oil spill. Here, I can speak from my personal experience. My uncle in Alabama has struggled to keep the doors open to our family's decades-old restaurant supply company after the 2010 BP oil spill, as the significant downturn in tourism has obliterated much of the company's customer base. Stronger regulations that are necessary for preventing these catastrophes or for minimizing their harmful consequences would thus deliver particularly large benefits to many small businesses that might otherwise be caught in harm's way.

The SBA Office of Advocacy Works Against Small Businesses, Not for Them

In the abstract, regulations do have a different impact on smaller businesses as compared to the larger ones with which they must compete. In many cases, the costs of complying with regulations can put smaller businesses at a competitive disadvantage with larger ones, which are better equipped to pass many of these costs along to their consumers. Larger businesses are also able to afford attorneys, engineers, accountants, and other compliance consultants, who can help them devise cheaper ways to fulfill regulatory requirements.

Partially out of concern for these differing impacts, Congress created the SBA Office of Advocacy to serve as a "voice for small businesses within the federal government." By any measure, though, the SBA Office of Advocacy's performance of this role has been a comprehensive failure. This isn't just my view. The Government Accountability Office (GAO) delivered a similarly scathing indictment of the SBA Office of Advocacy's performance in a report it published last July.⁹

Perhaps the single most important thing the SBA Office of Advocacy should be doing to fulfill its statutory mission is to actually solicit the input of real smaller businesses to obtain their unique views on government policies. In conducting its investigation, however, the GAO could find no evidence that the SBA Office of Advocacy ever interacts with smaller businesses in the course of conducting its duties.

⁸ *Id.* at 22, 35-38.

⁹ U.S. GOV'T ACCOUNTABILITY OFF., SMALL BUSINESS ADMINISTRATION: OFFICE OF ADVOCACY NEEDS TO IMPROVE CONTROLS OVER RESEARCH, REGULATORY, AND WORKFORCE PLANNING ACTIVITIES (GAO-14-525, 2014), available at <http://www.gao.gov/products/GAO-14-525>.

Even the comment letters that the SBA Office of Advocacy develops and submits regarding pending agency rulemakings do not appear to be based on input that the SBA Office of Advocacy received from smaller businesses. In fact, of the 11 comment letters that the GAO reviewed that purported to incorporate input from small business representatives, the SBA Office of Advocacy was unable to provide the GAO any evidence—such as emails or notes of conversations—of this input. Moreover, the SBA Office of Advocacy could provide no evidence that the decision to even draft these comment letters was made in response to actual concerns that smaller businesses had raised with the Office.

The SBA Office of Advocacy tried to persuade the GAO that it had received input for its comment letters by periodically convening “roundtable” discussions in Washington, DC, but the GAO rightly found this explanation to be inadequate. Of the comment letters that the GAO reviewed, 19 percent purported to incorporate input from roundtables, but the SBA Office of Advocacy failed to provide the GAO with any written evidence—such as meeting minutes—that could demonstrate that the views expressed in the comment letters were actually based on discussions that took place at roundtables. Moreover, the GAO found that the SBA Office of Advocacy does not consistently take attendance at its roundtables discussions. Without any attendance lists for roundtables, it is impossible to verify whether small business representatives are actually present (as opposed to just lobbyists representing large corporations and trade associations) and that the viewpoints that are shared at the roundtables actually reflect the unique concerns of real small businesses.

So, if the SBA Office of Advocacy is not talking to real smaller businesses, then who are they talking to? Recent work by my organization, CPR, and the Center for Effective Government has found copious evidence of communications between the SBA Office of Advocacy staff and large trade associations that are dominated by their large businesses members. I have attached to this testimony, a report CPR issued last month that documents the close working relationship the SBA Office of Advocacy had developed with the American Chemistry Council to oppose OSHA’s pending silica rule. I also commend to you two Center for Effective Government reports that also document the SBA Office of Advocacy’s close work with large businesses and trade associations to oppose various rulemakings: *Small Businesses, Public Health, and Scientific Integrity: Whose Interests Does the Office of Advocacy at the Small Business Administration Serve?*¹⁰ and *Gaming the Rules: How Big Business Hijacks the Small Business Review Process to Weaken Public Protections.*¹¹

These reports, when read together with the GAO report, paint a disturbing picture of the SBA Office of Advocacy. They suggest that the Office has become too focused on attacking those regulations opposed by large corporations and trade associations to properly address the unique concerns of real smaller businesses in accordance with the agency’s clear statutory mission. The end result is that smaller businesses are left in a worse position than they would be if the SBA Office of Advocacy didn’t exist at all: They continue to lack a meaningful spot at the

¹⁰ CTR. FOR EFFECTIVE GOV’T, SMALL BUSINESSES, PUBLIC HEALTH, AND SCIENTIFIC INTEGRITY: WHOSE INTERESTS DOES THE OFFICE OF ADVOCACY AT THE SMALL BUSINESS ADMINISTRATION SERVE? (2013), available at <http://www.foreffectivegov.org/office-of-advocacy-report>.

¹¹ CTR. FOR EFFECTIVE GOV’T, GAMING THE RULES: HOW BIG BUSINESS HIJACKS THE SMALL BUSINESS REVIEW PROCESS TO WEAKEN PUBLIC PROTECTIONS (2014), available at <http://www.foreffectivegov.org/gaming-the-rules>.

decision-making table while the larger corporations they compete against are able to have their already loud voice further amplified by what amounts to a taxpayer-funded advocate.

It's Time for a Reset: We Don't Have to Choose Between Small Businesses and Strong Public Protections

To move forward, we should begin to explore options for helping smaller businesses to meet their regulatory obligations in ways that do not undermine their ability to compete with the larger firms in their industry. In this way, the goal would not be to lower the standards that these smaller businesses must meet—as the SBA Office of Advocacy would have it. Instead, the goal would be to find ways to help those smaller businesses to comply with whatever measures are necessary to protect public health, safety, and the environment.

Over the years, Congress has taken some small steps toward various forms of enhanced compliance assistance for smaller business. With some creative thinking, these efforts can be expanded. Such creative solutions could include:

- **Providing monetary assistance to truly small businesses so that they can meet higher regulatory standards.** Monetary assistance could include direct subsidies to cover part or all of the costs of equipment upgrades required for regulatory compliance. Alternatively, the Small Business Administration (SBA) could work to obtain subsidized loans to help small businesses defray regulatory compliance costs.
- **Expanding regulatory compliance assistance programs.** The Small Business Regulatory Enforcement Fairness Act (SBREFA) established several compliance assistance programs, including requiring agencies to produce “compliance guides” for each of their rules that have a significant impact on small businesses. These compliance guides describe the rule and explain what actions small businesses need to take to comply. Congress can help improve the effectiveness of compliance guides by providing agencies with full funding to produce and distribute them.
- **Partnering small businesses to promote beneficial synergies on regulatory compliance.** For example, Congress could direct the SBA to establish a cooperative of small businesses within a given location, which could share the cost of compliance assistance services, such as those provided by accountants or engineering consultants. Alternatively, Congress could create an SBA-directed program that would build off the SBA’s existing preferential government procurement and contracting policies by establishing mutually beneficial partnerships between participating small businesses. For instance, if a small business requires special services, such as accounting, to comply with a regulation, then the program would help to partner that business with another small firm that provides those special services. In this way, the SBA program can assure that one small business’s compliance with regulations help to create a profitable market for another small business.

Thank you. I’d be pleased to answer any questions you might have.

The Small Business Charade
The Chemical Industry's Stealth Campaign
Against Public Health

by CPR President Rena Steinzor
and
CPR Executive Director Matthew Shutz and
CPR Senior Policy Analyst James Goodwin



©Center for Progressive Reform Issue Alert #1501
February 2015



*The Small Business Charade:
The Chemical Industry's Stealth Campaign Against Public Health*

Executive Summary

The Small Business Administration's Office of Advocacy is tiny and largely unaccountable, but it wields surprising power over the federal regulatory system. A steady stream of statutes and executive orders issued over the past three decades have imbued the Office of Advocacy with powerful supervisory authority over analytical and procedural requirements that regulatory agencies must satisfy before issuing rules on everything from worker safety to air pollution. In important ways, the Office of Advocacy's role in the regulatory system bears a striking resemblance to that played by the White House Office of Information and Regulatory Affairs (OIRA). Both operate to similar effect, functioning as an anti-regulatory force from within the regulatory structure, blocking, delaying, and diluting agency efforts to protect public health and safety.

Congress did not create the Office of Advocacy to play this role. Instead, by statute, the Office of Advocacy is supposed to advance the interests of small businesses that may lack the resources or expertise to field expansive lobbying efforts in Washington, especially in light of the lobbying efforts conducted on behalf of large corporations and trade associations, whose interests rarely align with those of real small businesses. The Office of Advocacy enjoys a privileged role in the rulemaking process because the law requires agencies to pay special attention to its objections and modify regulations to make them small businesses-friendly (*i.e.*, by not putting small businesses at a competitive disadvantage to larger firms within their sector) without sacrificing protections for public health, worker and consumer safety, and the environment.

To carry out this intended role, the Office of Advocacy could reach out to actual small business owners across the country to learn about the real challenges that government policies might pose for them. It could develop good working relationships with agency officials to help them achieve their statutory mission without unduly burdening small businesses. But in actual practice, the Office of Advocacy has pursued another agenda, focusing on forming alliances with big businesses, and especially trade associations that lobby on behalf of large corporate interests, and working to block any regulations that they might find inconvenient to their bottom line, even at the cost of properly safeguarding people and the environment.

The Occupational Safety and Health Administration's (OSHA's) ongoing efforts to draft new rules covering worker exposure to crystalline silica offer a striking example of how the strong ties between the Office of Advocacy and big-business trade associations threaten public health. In developing its response to OSHA's proposed silica standard, the Office of Advocacy has leaned heavily on the leading trade association representing multi-billion-dollar chemical companies inside the Beltway, the American Chemistry Council (ACC). For example:

- One-quarter of the small entity representatives who participated in the Small Business Advocacy Review Panel were nominated by advocates linked to ACC.

- ACC and its affiliates led discussions at “roundtable” meetings sponsored by the Office of Advocacy, which the Office of Advocacy later described as the primary source of information for its formal comments to OSHA.
- OIRA granted ACC-affiliated advocates eight closed-door meetings to discuss the proposed rule. Representatives from Advocacy participated in six of the eight meetings.
- One-third of the specific points that Advocacy raised in its formal comments on the rule overlap with points that ACC made in its formal comments.

For such behavior, the Government Accountability Office (GAO) recently issued a report that took the Office of Advocacy to task for failing to follow the basic policies and recordkeeping standards that would prove Advocacy’s formal rulemaking comments actually reflect input received from small business representatives. The disturbing portrait portrayed in the GAO report aligns with the evidence laid out in this Issue Alert, reflecting the deep ties between the Office of Advocacy and the American Chemistry Council.

In order for the Office of Advocacy to comply with its statutory mandate and end its persistent misuse of taxpayer dollars, reforms are in order:

- Advocacy should establish and abide by new policies that ensure its staff work to advance the unique interests of small businesses within the bounds of occupational-safety, environmental, and consumer-protection laws.
- Congress should increase its oversight of the Office of Advocacy.
- The President should revoke Executive Order 13272, which gives the Office of Advocacy too much sway over other agencies’ rulemaking processes.

Introduction

Silica dust is a slow, silent killer. Workers who cut concrete, brick, or tile, who put the finishing touches on drywall, or who mine sand or attend to fracking operations inhale the tiny crystalline particles throughout the day. Roughly 2 million U.S. workers in dozens of different industries toil in workplaces with silica levels high enough to threaten their health. As the dust swirls through workers' lungs, it causes lung tissue to swell and become inflamed. Workers experience difficulty breathing and, over time, develop scarring and stiffening of the lungs. The resulting condition, called silicosis, is debilitating, and the lung damage that comes with it can increase a person's risk of tuberculosis and even lung cancer. OSHA estimates that thousands of workers die every year because of silica exposures that are within legal limits.

In September 2013, after decades of research and 17 years of administrative wrangling, the Occupational Safety and Health Administration (OSHA) proposed updating its outdated exposure limits for crystalline silica with a comprehensive rule that would require employers to limit their workers' exposure to silica dust and provide other protections like exposure monitoring and free medical exams when workers are exposed to dangerous levels of the dust. Thus began an intense period of lobbying in which workers' advocates have urged OSHA to strengthen its proposal and business community lobbyists have expressed everything from qualified support to outright hostility.

At the extreme anti-regulatory end of the spectrum is the American Chemistry Council (ACC), which has gone so far as to assert that OSHA has failed to make the basic showing that silica presents a "significant risk" to workers' health at current exposure levels. Extensive scientific assessments by OSHA,

What is the American Chemistry Council and why do they care about silica?

ACC is a highly influential trade association comprising more than 180 companies that manufacture, import, and use chemicals. These companies include the biggest names in the chemical industry, from AkzoNobel to DuPont to W.R. Grace & Co., and a limited cadre of small businesses. The trade association employs a stable of lobbyists, risk assessment experts, economists, and consultants who operate on behalf of ACC's member companies to fight new government regulations that might cut into their bottom lines. As discussed in more detail below, ACC and its affiliates lobby Congress, litigate against regulatory agencies, and fund public relations campaigns aimed at forestalling regulations that would protect the public health.

Many of ACC's member companies use or manufacture silica-containing products. Its natural abundance and physicochemical properties make it useful for everything from hydraulic fracturing in natural gas fields to sandblasting finishes off of bridges and other major structures. ACC is also acting as a coordinator for non-members who want to weaken OSHA's proposed silica rules. U.S. Silica, for instance, is a leading manufacturer of silica, and although it is not a member of ACC, it is participating in the ACC Crystalline Silica Panel – a formal coalition of groups advocating against the rule, supported by ACC staff and consultants.

the National Institute for Occupational Safety and Health, the World Health Organization, and other neutral parties repudiate ACC's claim.¹ Drawing on its vast resources and political clout, ACC has been heavily involved at every step of the rule's development. For example, at OSHA's multi-day public hearing on the proposal, an event that is in many respects central to the agency's rulemaking process, ACC was a featured attraction, reserving an entire afternoon for testimony from its spokespeople and coordinating testimony with its member organizations that took up additional bits and pieces of eight more days. In total, testimony from lobbyists and other people affiliated with ACC and its members consumed more than 14 hours of the hearing, or about a quarter of the total hearing time. That is nearly as much as all of the unions, public interest groups, and their allies combined (that total was just under 18 hours).

The Small Business Administration's Office of Advocacy (Advocacy) is also taking part in the campaign to undermine OSHA's work on the silica rule. Congress's purpose in establishing the Office of Advocacy was to ensure that the unique small business perspective on such federal policies as OSHA's silica rule was accounted for. The extraordinary step of creating what amounts to a taxpayer funded lobbying shop reflects Congress's conclusion that the small business perspective might otherwise be overlooked because small businesses—genuinely small businesses, at least—lack the resources and sophistication to participate in the federal decision-making processes. But in the case of the silica rule, Advocacy's arguments against the proposal and those offered by the ACC are conspicuously similar. The evidence indicates that this similarity is not a coincidence, or even the result of parallel analysis and conclusions. Rather, it is the result of coordination between ACC and Advocacy. Email communications between Office of Advocacy staff and outside parties show that the agency, contrary to its clear statutory mission, takes its cues mostly from the major trade associations that are funded by and that primarily represent big businesses. Meanwhile, the true voice of small businesses is largely unheard.

This Issue Alert focuses on the connection between the Office of Advocacy and ACC with respect to one rule at one agency, but the problems run deeper than that. CPR's January 2013 White Paper, *Distorting the Interests of Small Business*,² documents Advocacy's pattern of hostility to proposed regulations that protect the public from a variety of environmental, health, workplace, and other hazards. Released at the same time, the Center for Effective Government's report, *Small Businesses, Public Health, and Scientific Integrity: Whose Interests Does the Office of Advocacy at the Small Business Administration Serve?*,³ highlights how Advocacy has even fought against environmental and public health agencies' efforts to develop the basic risk assessment documents that form the basis for rules on the use of toxic chemicals.

The Mouse that Roared

Congress established the Office of Advocacy in 1976 with the primary goal of establishing a team of experts who could assess how government subsidies, regulations, taxes, and financial market manipulations affect small businesses. To promote small business interests, Congress directed Advocacy to serve as a clearinghouse for small business complaints, criticisms, and suggestions about federal regulations and to represent the small business community in federal regulatory proceedings. The office has a budget of less than \$9 million and a small staff working on regulatory issues,⁴ yet it wields outsized power over the rulemaking processes at important protector agencies such as OSHA, the Environmental Protection Agency (EPA), and the Consumer Financial Protection Bureau (CFPB).

The Office of Advocacy's power over the federal rulemaking process expanded significantly when President Carter signed the Regulatory Flexibility Act (the "Reg-Flex Act")⁵ in 1980. That law required federal regulatory agencies to undertake a thorough analysis of any proposed rule's potential effect on small businesses.⁶ If an agency determines that its proposal has the potential to have a "significant economic impact on a substantial number of small businesses," the agency must conduct two rounds of formal "regulatory flexibility" analysis—an initial analysis, and a final analysis that takes into consideration comments from the public and Advocacy. In 1996, Congress amended the Reg-Flex Act to make agency compliance with these analytical requirements judicially reviewable.⁷ This amendment makes the analyses part of the record for judicial review, and it authorizes reviewing courts to reject a rule on the sole basis that the agency had failed to adequately carry out one of the analyses in accordance with the law's requirements.

Congress has singled out OSHA, EPA, and CFPB for enhanced supervision by the Office of Advocacy by requiring them to jump through additional hoops whenever their proposed rules might significantly affect a substantial number of small businesses. The Clinton-era Small Business Regulatory Enforcement Fairness Act (SBREFA) requires those agencies to establish a Small Business Advocacy Review Panel (SBAR Panel) for those rules. The SBAR panel consists of representatives from Advocacy, the White House Office of Management and Budget, and the regulatory agency responsible for the rule (OSHA, EPA, or CFPB). The SBAR panel asks a number of individuals from small businesses potentially affected by the rule to provide input on a draft shared by the regulatory agency. The Office of Advocacy is intimately involved in the selection of small business representatives and, as described below, often takes cues on its nominees from big business's advocates. The SBAR panel process occurs well before the agency publicly releases its draft proposal, giving Advocacy and its allies the first crack at critiquing the rule. Since this privileged opportunity comes so early in the decision-making process, the SBAR panel process gives Advocacy and the small business representatives involved enormous influence over what the rule will look like, and indeed whether the rule ever sees the light of day.

In 2002, President Bush further strengthened the Office of Advocacy's power over executive branch agencies. In Executive Order 13272, Bush instructed Advocacy to "train" other agencies on how to comply with the Reg-Flex Act. With the blessing of a White House plainly hostile to federal regulation, the Office of Advocacy developed a guidance document that has the effect of

expanding the Act's reach (thereby giving Advocacy additional power to slow down new rules) and demanding that agencies conduct unreasonable levels of analysis (including analyses of alternative regulatory approaches that go beyond the agency's statutory authority). These changes, combined with Advocacy's power to essentially pass judgment on whether an agency has complied with the Reg-Flex and SBREFA procedures, gives the small office incredible power over regulatory agencies.

In addition to the Reg-Flex and SBREFA powers that the Office of Advocacy wields, it has a number of other tools at its disposal that it can use to derail other agencies' regulatory agendas. Advocacy submits formal comments to agencies during the normal "notice-and-comment" procedures; a recent amendment to Reg-Flex requires agencies to respond to these comments when justifying their final rules, ensuring that Advocacy's comments receive special attention. Sometimes these comments are supported in part by formal research studies conducted by contractors, although the office has a track record of sponsoring biased and flawed research.⁸ In addition, Advocacy's comments are supposed to be informed by small business views, although GAO found that Advocacy lacks sufficient documentation to prove that its comments are developed in that way.⁹

Representatives from the Office of Advocacy are regularly called before congressional oversight committees to give their views on other agencies' rules and compliance with Reg-Flex and SBREFA. They rarely fail to use these opportunities to shame agencies whose rules they do not support, and they echo these complaints in statutorily mandated annual reports to Congress.

Officials from Advocacy also frequently participate in White House meetings about proposed rules, where potentially regulated parties present their arguments to the Office of Information and Regulatory Affairs (OIRA)—the "gatekeepers" whose approval must be won before a rule can be formally proposed or finalized. Indeed, during the Bush Administration, the Office of Advocacy and OIRA entered into a Memorandum of Understanding in which the two agencies agree to work closely together on what amounted to blocking, delaying, and diluting agency rules. A 2011 CPR study documents the overwhelming influence that OIRA meetings can have in shaping the substance of final rules.¹⁰ The Office of Advocacy's privileged role in these meetings thus gives it another powerful lever for influencing agency rulemakings.

With this array of procedures and other tools available to it, the Office of Advocacy can be a powerful force standing in the way of a regulatory agency that wants to establish new rules.

ACC, the Office of Advocacy, and OSHA's Silica Rule

OSHA has been working on its new silica standard since 1997, and it has been dealing with ACC and Office of Advocacy opposition since the beginning. Not long after OSHA began working on the rule, ACC established a workgroup to fight OSHA's efforts to better protect workers from the harmful effects of silica exposure. The Crystalline Silica Panel, as it is known, is an association of associations, with key players representing businesses that both produce and use a full range of silica-containing products. The Crystalline Silica Panel comprises eight major corporate interests, at least eight other trade associations, and a single "small" business—an industrial sand mining company with two processing plants and separate corporate office.

<i>Trade associations</i>	<i>Big businesses</i>	<i>'Small' business</i>
American Foundry Society	ExxonMobil Corporation	Badger Mining Corporation
American Petroleum Institute	Fairmount Minerals Ltd.	
Concrete and Masonry Silica Coalition	Lafarge North America Aggregates and Concrete	
International Diatomite Producers Association	Lehigh Hanson	
National Industrial Sand Association	Specialty Granules Inc.	
National Stone Sand & Gravel Association	Unimin Corporation	
North American Insulation Manufacturers Association	U.S. Silica Company	
The Refractories Institute	Vulcan Materials Company	

In the silica rulemaking, ACC has manipulated Advocacy's role in the rulemaking process, and it has done so in a way that threatens critical worker protections. For instance, the Office of Advocacy helps to select the small business representatives who will provide advice to the SBAR Panel and takes part in the development of the Panel's final report to OSHA. These early-in-the-process decisions can have an enormous impact on the eventual shape and breadth of rules, and can even derail the process altogether. In theory, an SBAR Panel could ask for advice from mostly small business owners, who could report that they would benefit from a strong rule and who would encourage OSHA to forge ahead (e.g., industrial hygiene consultants, control-equipment manufacturers, or occupational health specialists). But in practice, the Advocacy has tended to work with trade associations to identify "small entity representatives" (SERs) who toe an anti-regulatory line and use their advance knowledge of a proposed rule's content to get a leg up on their advocacy in opposition. During the SBAR panel for the silica rule, SERs demanded access to OSHA's background research at the behest of trade associations.¹¹ The trade associations were then in a position to conduct biased "re-analysis" of information obtained through SBAR Panel participants and use it to lobby Members of Congress.¹² SERs who engage in this behavior skew the SBAR Panel proceedings toward a combative experience for OSHA, also peppering the agency with detailed questions about the economic and technological research

that supports the proposal and demanding that OSHA conduct unnecessarily detailed follow-up analyses.

The SBAR Panel's final report, drafted in part by the Office of Advocacy and reflecting the combative tone of the Panel's proceedings, puts OSHA in a defensive posture and strengthens the position of anti-regulatory advocates in several ways. Standard rulemaking procedures do not include a parallel process for obtaining input from the workers, unions, or other intended beneficiaries of an OSHA rule at that stage in the process, so the SBAR Panel's final report is released into a vacuum in which it becomes the starting point for all subsequent discussion regarding the proposed rule. The report is not released for public comment before being submitted to OSHA, so it may include misleading information. And OSHA responds directly to the report's recommendations, but not until a proposed rule is published in the *Federal Register*. Sometimes that can take years—just under 10 years, in fact, in the case of the silica proposal—all the while leaving the unchallenged SBAR Report “in the wild” to provide ammunition for groups fighting the rule.

After helping draft the SBAR Panel's final report, Advocacy takes on a role akin to that of a lobbying firm, participating directly in the rulemaking process, including the submission of written comments to the agency and testimony in relevant congressional oversight hearings. Unlike traditional lobbying firms, the Office of Advocacy's participation commands special attention from OSHA and other federal agencies, since its actions are backed by explicit congressional and presidential authority and since agencies are legally required to account for the office's views in their final rules, as described above. Regulatory agencies are reluctant to disregard the Office of Advocacy's comments, particularly with regard to the adequacy of the Reg-Flex Act analyses, since the Office of Advocacy's criticism can provide a reviewing court with sufficient grounds for rejecting a rule once it has been challenged in court. Many courts take the Office of Advocacy's comments as powerful evidence that an agency has or has not failed to comply with applicable Reg-Flex Act requirements, though these courts are otherwise not obliged to defer to the Office's interpretations of Reg-Flex's provisions.¹³

Here is what ACC's manipulation of Advocacy looks like in practice, in rough chronological order:

- The Office of Advocacy's official nominees to act as SERs for the silica SBAR Panel included at least eight individuals whose names were submitted by advocates linked to ACC's Crystalline Silica Panel. *One-quarter of the SERs were nominated by advocates linked to ACC.*
- Emails obtained through the Freedom of Information Act show that *trade associations did much of the legwork for the SERs in preparation for the SBAR Panel's two-day conference in November 2003*, including reviewing the draft rule and coordinating with the Office of Advocacy regarding follow-up information requests to OSHA.
- Following the two-day conference, SERs were provided the opportunity to submit formal comments to the SBAR Panel, which would use the comments in drafting its final report. OSHA is required by statute to address the concerns raised in the SBAR Panel's report when finalizing a rule. Emails obtained from the Office of Advocacy through the Freedom of Information Act suggest that *the Crystalline Silica Panel was intimately*

involved in the development of at least three SERs' comments—the two SERs who were nominated by the National Industrial Sand Association (NISA), and one SER who was nominated by the National Stone, Sand, and Gravel Association (NSSGA). Both NISA and NSSGA are key members of ACC's Crystalline Silica Panel. *The SBAR Panel report cites the NISA-drafted comments more than a dozen times and includes extensive quotes from the document. The report also references points made in the NSSGA-drafted comments more than a dozen times.*

- When OSHA sent its revised draft to the White House for final review (the last step before a proposed rule is published in the *Federal Register*), a flurry of activity began, including *eight meetings at OIRA, requested by members of ACC's Crystalline Silica Panel. The Office of Advocacy's OSHA specialist attended six of those eight meetings.* Emails obtained from the Office of Advocacy through the Freedom of Information Act indicate that trade associations considered Advocacy to be a critical ally in their efforts to sway the White House to water down the rule. In urging an Advocacy lawyer to attend one such meeting, one lobbyist said that trade associations “can always use reinforcements.”¹⁴
- As noted above, Advocacy regularly hosts “roundtable” events, which it cites in its formal rulemaking comments as a source of small business views on the rule at issue. *Between the 2003 SBAR panel and the 2014 OSHA hearings on the proposed silica rule, Advocacy hosted numerous roundtables at which the rule was a central point on the agenda.* Documents obtained through the Freedom of Information Act show that *ACC's Crystalline Silica Panel drove those discussions, giving presentations that presaged many of the arguments the Office of Advocacy later submitted to OSHA as concerns raised by the small business community.*
- When the White House finally approved the proposed rule's publication and OSHA opened a formal comment period in September 2013, Advocacy submitted two formal comments, both of which conspicuously align with the ACC Crystalline Silica Panel's advocacy efforts.
 - In October 2013, Advocacy urged OSHA to extend the comment period and expand the hearing that was set to begin a few months later. The Crystalline Silica Panel and its member organizations were also major proponents of delay. In 2013 and the first quarter of 2014, organizations that are part of the Crystalline Silica Panel donated more than \$80,000 to the campaign chests of 16 Senators who sent a letter to OSHA demanding delay in the rulemaking process.
 - In February 2014, Advocacy submitted its comments on the substance of OSHA's proposed rule. *Of the 29 specific points raised in Advocacy's comments, roughly one-third have direct connections to points that the Crystalline Silica Panel made in its formal comments.* The connections appear to be more than mere coincidence, given that several of Advocacy's key points, especially on economic issues, echo concerns raised in a draft economic analysis that was sponsored by ACC and shared with Office of Advocacy staff in 2011.¹⁵

This timeline illustrates that the Office of Advocacy has been highly dependent upon the ACC Crystalline Silica Panel and its members to guide its participation in the silica rulemaking process. As noted above, Advocacy has come under fire from independent auditors at GAO for failing to use standardized procedures to obtain input from small businesses when developing

comments.¹⁶ The timeline above shows that the Office of Advocacy's weak internal controls leave staff susceptible to manipulation by major trade associations. The Office of Advocacy's dependency on ACC in the silica rulemaking raises three major public policy concerns:

- **This approach covers ACC's tracks and undermines the rulemaking process.** A fundamental principle of U.S. administrative law is that the regulatory process must be open and transparent to work effectively. If powerful players in the process use government reports as Trojan Horses to attack rulemaking agencies, then the decisionmakers at the agency—and, later, the judges reviewing the rulemaking record—will not be able to accurately assess the potential biases in the reports. This secrecy also undermines the efforts of other stakeholders to participate meaningfully in the rulemaking process. If these stakeholders are not able to accurately ascertain the real source of information in the Office of Advocacy's rulemaking comments, then they will be hindered in their ability to effectively respond to any arguments raised in those comments.
- **The Office of Advocacy becomes redundant and a waste of taxpayer money.** If the Office of Advocacy adds nothing new to the process—if their comments cover the same ground as well-financed industry groups—then scarce public resources should not be allocated to them. Every year, the Office of Advocacy's nearly \$9-million budget goes toward amplifying the voices of big businesses in rulemaking process where they already being heard and heeded.
- **By relying on well-heeled trade associations, the Office of Advocacy perpetuates the problem of small businesses still not having their unique concerns represented.** (This, of course, assumes they have any legitimate unique concerns in the first place.) As OSHA works toward a final rule, its rulemaking staff still have no idea what impact the rule will have on real small businesses. The blame for that must fall squarely on the Office of Advocacy's shoulders.

ACC: A Deeper Look

Three features of ACC's advocacy model make it a powerful player inside the Beltway and a threat to public health: how ACC raises and spends money; the issues that make up ACC's agenda; and ACC's close ties to powerful anti-regulatory forces inside the government.

Dark Money

Since former U.S. Representative Cal Dooley took the helm at ACC in 2008, the trade association has flourished financially and spread its bounty wide. Even while the chemical industry suffered economic contraction as a result of the Great Recession, ACC has brought in new members and increased its revenues and assets. In 2012, the last year for which data are available, ACC brought in over \$111 million in reportable revenues and had over \$121 million in total reportable assets.

ACC's primary source of revenues is dues assessed to the 182 companies that comprise its membership. Over the period 2004-2012, ACC took in between \$75 million and \$84 million in membership dues annually.

Some of ACC's basic financial information is public record because it operates under Internal Revenue Service (IRS) nonprofit regulations, but the amount of money that individual companies and trade associations contribute is protected by privacy laws. Nonetheless, occasional tidbits of information leak out from other sources. For instance, although The Dow Chemical Company does not release information about the dues it pays to ACC, the company reports that ACC spent more than \$1.3 million of Dow's contributions on reportable federal lobbying expenditures in 2012. That year, ACC reported a total of \$9.07 million in federal lobbying expenditures, 14 percent of which was apparently derived from Dow's contributions alone.

ACC contributes directly to politicians and their campaign committees in the small reportable quantities common among major lobbying groups, and evidence suggests that ACC also plays a role in directing its constituent companies where and when to make their political donations. For example, Members of Congress have published two open letters criticizing the silica rule, one from Republican Senators to OSHA chief David Michaels in November 2013 and one from House Republicans to Secretary of Labor Tom Perez in February 2014.

- The signatories on the Senate letter collectively received more than \$80,000 in campaign contributions from ACC's political action committee (PAC) and the PACs of individual ACC Crystalline Silica Panel members.
- The signatories on the House letter collectively received more than \$230,000 in campaign contributions from those same PACs.

Beyond the political arena, ACC funnels substantial sums of money to researchers whose work adds the patina of neutral legitimacy to the trade association's biased scientific and economic arguments. ACC's IRS filings provide a glimpse into this marketplace. Until 2007, ACC reported certain expenses that were classified as "consulting and research." ACC's expenses for this work hovered around \$50 million per year. Individual recipients were not named, but their

work crops up in ACC's advocacy efforts regularly. In the silica rulemaking, for instance, ACC's argument that OSHA failed to make adequate "significant risk" findings relies heavily on the work of Louis Anthony Cox, Jr., Ph.D., President of the Denver-based Cox Associates, and a fixture in the congressional hearings, agency stakeholder meetings, and myriad other forums in which his detailed scientific analysis of agency regulatory efforts invariably weigh in favor of more research and less action by the agency. Cox is Editor-in-Chief of *Risk Analysis: An International Journal*, which is published by the industry-dominated Society for Risk Analysis, and which has long supported research aimed at either weakening safeguards or manufacturing doubt about the hazards those safeguards are intended to address.

Dangerous Agenda

ACC's member companies are responsible for soil and groundwater contamination across the country.

- According to EPA's Toxic Release Inventory, in 2012, ACC member companies reported releasing into the environment a total of roughly 30 million pounds of carcinogens.
- Roughly half of ACC's member companies are found on EPA's Superfund program "List 11," meaning they have been identified as potentially responsible parties (PRPs) for heavily polluted lands in need of complex and expensive cleanup efforts. The PRP designation is significant because it means that a company could be on the hook for millions of dollars in cleanup costs associated with removing decades-old contamination.

With these groups paying ACC's bills, it is no wonder that the trade association's agenda is primarily focused on exonerating chemicals that are widely recognized as being dangerous, much as the tobacco industry sought to do while evidence of the dangers of smoking and second-hand exposure to smoking continued to mount. Silica, though perhaps not as well-known as formaldehyde, BPA, and the other organic and synthetic chemicals produced by ACC's members, is nonetheless an important industrial mineral and a major occupational hazard.

As part of its overarching agenda to forestall government regulation, ACC has worked hard in opposition to OSHA's silica standard, as detailed above. This rulemaking is also of special concern because the standard proposes limiting worker exposure to silica by requiring ACC's member companies to invest in new safety equipment and provide other services to workers to improve their health and safety. ACC's Crystalline Silica Panel has attacked the rule by focusing mostly on the costs associated with these changes, without acknowledging or accounting for the important benefits that will accrue to workers.

Multi-front Battles and Government Accomplishes

Like other successful advocates, ACC pushes its agenda in Congress, in the courts, in regulatory agencies, and in the media. It is certainly within its rights to do so. But ACC has an additional tool that is not available to all other advocates: close coordination with the SBA's Office of Advocacy. ACC's connection to the Office of Advocacy is particularly insidious because of the outsized role that Advocacy can play in the rulemaking process. As described above, Congress has passed several laws that require regulatory agencies such as EPA and OSHA to go through additional analytical steps to formally address concerns raised by small businesses and the Office of Advocacy. When those procedures are manipulated by big businesses and their trade

associations, the result inevitably undercuts the principal missions of the agencies—in the case of OSHA, working to protect public health.

Conclusion and Recommendations

ACC is using the Office of Advocacy as a pawn in its broad effort to prevent public health agencies from achieving their missions. The ACC's ongoing control of the Office of Advocacy's interventions in agency rulemakings—such as OSHA's silica rule—serves to waste taxpayer dollars, neglect the interests of actual small businesses, and undermine critical safeguards for workers and the public. To prevent this from happening, several things could be done:

- ❖ ***The Office of Advocacy should take steps to document that its comments on rules are informed by the views of real small businesses and account for the unique interests of those businesses that would be impacted by the rule.*** When an agency rule does not implicate the legitimate and unique interests of small businesses, the Office of Advocacy should refrain from participating in the rulemaking.
- ❖ ***The President should revoke Executive Order 13272.*** The Executive Order set the stage for the Office of Advocacy to expand its reach into a broader class of agency regulatory efforts. As a result, trade associations can manipulate the Reg-Flex and SBREFA processes in more rules and thwart even more actions than would have been possible before the Executive Order. To cut bureaucratic red tape that threatens public health, Executive Order 13272 should be revoked.
- ❖ ***Agencies should be empowered to marginalize the Office of Advocacy's comments when they are not based on statistically valid sampling of small businesses.*** Regulatory agencies are held to a high standard when they develop regulations, and they face severe criticism if their evidence is not based on sound data-gathering and analysis. The Office of Advocacy should hold its own work to similar standards, and the agencies should hold Advocacy to them as well—only altering proposed regulations to account for small business concerns where those concerns are well documented, independently verified as necessary, and related to significant impacts that actually threaten the ability of small firms to compete against larger ones.
- ❖ ***Congress should commit to conducting routine and thorough oversight of the Office of Advocacy.*** Additional oversight will ensure that the Office of Advocacy does not continue to stray from its mission, wasting taxpayer dollars and undermining the implementation of important public health laws. The relevant committees in Congress can begin this task by looking specifically into the Office of Advocacy's interference in OSHA's silica rulemaking on behalf of the ACC. Congress should also consider requesting follow-up GAO audits of the Office of Advocacy's activities, with a particular focus on its policies and procedures for obtaining the views and concerns of a wide array of small businesses.

These reforms will go a long way toward halting and potentially reversing the dangerous "mission creep" that has led the Office of Advocacy to maintain a reactionary, anti-regulation viewpoint that mirrors the simplistic rhetoric of the big-business trade associations. These are achievable goals in the short term and they could have a significant effect on the operations of the federal agencies that are often stymied in their efforts to protect public health by an Office of Advocacy that is being unduly manipulated by big business advocates.

Endnotes

- ¹ DEPT. OF LABOR, OSHA, Occupational Exposure to Crystalline Silica, Proposed Rule, 79 Fed. Reg. 56274, 56311 (Sept. 12, 2013); CDC, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, *NIOSH Hazard Review: Health Effects of Occupational Exposure to Respirable Crystalline Silica* (Apr. 2002), available at <http://www.cdc.gov/niosh/docs/2002-129/pdfs/2002-129.pdf> (accessed Aug. 18, 2014); WORLD HEALTH ORGANIZATION, *Concise International Chemical Assessment Document 24—Crystalline Silica, Quartz* (2000), available at <http://www.who.int/ipcs/publications/cicad/en/cicad24.pdf> (accessed Aug. 18, 2014).
- ² Shapiro et al., *Distorting the Interests of Small Business: How the Small Business Administration Office of Advocacy's Politicization of Small Business Concerns Undermines Public Health and Safety*, Center for Progressive Reform White Paper #1302 (Jan. 2013), available at http://www.progressivereform.org/articles/SBA_Office_of_Advocacy_1302.pdf (accessed Aug. 18, 2014).
- ³ Rabinowitz et al., *Small Businesses, Public Health, and Scientific Integrity: Whose Interests Does the Office of Advocacy at the Small Business Administration Serve?* (Jan. 2013), available at <http://www.foreffectivegov.org/files/regs/office-of-advocacy-report.pdf> (accessed Aug. 18, 2014).
- ⁴ See GOV'T ACCOUNTABILITY OFFICE, *SMALL BUSINESS ADMINISTRATION: Office of Advocacy Needs to Improve Controls over Research, Regulatory, and Workforce Planning Activities* (July 2014), available at <http://www.gao.gov/products/GAO-14-525> (accessed Aug. 18, 2014) (hereinafter GAO 2014 Report on Advocacy).
- ⁵ 5 U.S.C. §§ 601-612.
- ⁶ Pub. L. 96-354.
- ⁷ Pub. L. 104-121.
- ⁸ See GAO 2014 Report on Advocacy, 10-16, *supra* n.4 and Shapiro et al., *Setting the Record Straight: The Crain and Crain Report on Regulatory Costs*, Center for Progressive Reform White Paper #1103 (Feb. 2011), available at http://www.progressivereform.org/articles/SBA_Regulatory_Costs_Analysis_1103.pdf (accessed Aug. 18, 2014).
- ⁹ See GAO 2014 Report on Advocacy, 17-18, *supra* n.4.
- ¹⁰ Steinzor et al., *Behind Closed Doors at the White House: How Politics Trumps Protection of Public Health, Worker Safety, and the Environment*, Center for Progressive Reform White Paper #1111 (Nov. 2011), available at http://www.progressivereform.org/articles/OIRA_Meetings_1111.pdf (accessed Aug. 18, 2014).
- ¹¹ Email from Bob Glenn, National Industrial Sand Association, to Lee Cole, C.E.D. Enterprises, Inc., Nov. 19, 2003, *on file with authors* (obtained through Center for Effective Government Freedom of Information Act request).
- ¹² Letter from the John Smith, Jr., Mason Contractors Association of America, to The Honorable Jim Talent, United States Senate, Nov. 18, 2003, *on file with authors* (obtained through CEG Freedom of Information Act request).
- ¹³ *Am. Trucking Ass'ns v. EPA*, 175 F.3d 1027, 1044 (D.C. Cir. 1997), *modified in other respect*, 195 F.3d 4 (D.C. Cir. 1999), *reversed in other respect*, *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457 (2001). In one case, a federal district court rejected a National Marine Fisheries Service (NMFS) rule setting commercial fishing quotas for Atlantic shark species after finding that the agency had failed to comply with various Reg-Flex procedures. *Southern Offshore Fishing Ass'n v. Daley*, 995 F. Supp. 1411, 1436 (M.D. Fla. 1998). The court's analysis in support of this finding relied heavily on the comments that the Office submitted during the rulemaking process. See *id.* at 1435.
- ¹⁴ Email from MJ Marshall, Mason Contractors Association of America, to Charles A. Maresca, SBA Office of Advocacy, Dec. 9, 2003, *on file with authors* (obtained through CEG Freedom of Information Act request).
- ¹⁵ Compare Environomics, Inc. and URS Corporation, *Estimated Costs and Adverse Economic Impacts of a Potential New OSHA Occupational Exposure Standard for Crystalline Silica With a PEL of 50 µg/m³ and Ancillary Requirements*, *Draft Final Report for the American Chemistry Council Crystalline Silica Panel*, pp. 9, 36-37 (July 2011), *on file with authors* (obtained through CEG Freedom of Information Act request), with Letter from Winslow Sargeant and Bruce E. Lundegren, SBA Office of Advocacy, to The Honorable David Michaels, OSHA, re: Comments on OSHA's Proposed Occupational Exposure to Respirable Crystalline Silica Rule, Feb. 11, 2014.
- ¹⁶ GAO 2014 Report on Advocacy, 16-18, *supra* n.4.

About the Center for Progressive Reform

Founded in 2002, the Center for Progressive Reform is a 501(c)(3) nonprofit research and educational organization comprising a network of scholars across the nation dedicated to protecting health, safety, and the environment through analysis and commentary. CPR believes sensible safeguards in these areas serve important shared values, including doing the best we can to prevent harm to people and the environment, distributing environmental harms and benefits fairly, and protecting the earth for future generations. CPR rejects the view that the economic efficiency of private markets should be the only value used to guide government action. Rather, CPR supports thoughtful government action and reform to advance the well-being of human life and the environment. Additionally, CPR believes people play a crucial role in ensuring both private and public sector decisions that result in improved protection of consumers, public health and safety, and the environment. Accordingly, CPR supports ready public access to the courts, enhanced public participation, and improved public access to information.

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Acknowledgements

This Issue Alert is a collaborative effort of the following CPR Member Scholars and staff:

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- **Matthew Shudtz** is the Executive Director of the Center for Progressive Reform.
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Thanks to the Center for Effective Government, especially Regulatory Policy Analyst Katie Weatherford, for sharing the documents obtained via the Freedom of Information Act that were essential to this Issue Alert.