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4 HEARING ON REGULATORY CHAOS: FINDING LEGISLATIVE SOLUTIONS
5 TO BENEFIT JOBS AND THE ECONOMY
6 THURSDAY, JULY 14, 2011
7 House of Representatives,
8 Subcommittee on Environment and the Economy
9 Committee on Energy and Commerce
10 Washington, D.C.

11 The subcommittee met, pursuant to call, at 9:09 a.m., in
12 Room 2322 of the Rayburn House Office Building, Hon. John
13 Shimkus [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Shimkus, Murphy,
15 Whitfield, Pitts, Latta, McMorris Rodgers, Gardner, Barton,
16 Green, Butterfield, Barrow, and Waxman (ex officio).

17 Staff present: Charlotte Baker, Press Secretary; Jerry
18 Couri, Professional Staff Member, Environment; Heidi King,

19 Chief Economist; Dave McCarthy, Chief Counsel, Environment
20 and the Economy; Carly McWilliams, Legislative Clerk; Tina
21 Richards, Counsel, Environment and the Economy; Chris Sarley,
22 Policy Coordinator, Environment and the Economy; Alison
23 Cassady, Democratic Senior Professional Staff Member; Greg
24 Dotson, Democratic Energy and Environment Staff Director;
25 Caitlin Haberman, Democratic Policy Analyst; and Alexandra
26 Teitz, Democratic Senior Counsel, Environment and Energy.

|
27 Mr. {Shimkus.} The committee will come to order. We
28 want to welcome you all here. I would like to recognize
29 myself for the first 5-minute opening statement.

30 From our first hearing of this Congress we have
31 continued to focus on the impact that federal regulations can
32 have on the economy, particularly on job prospects.

33 We have heard from Administration officials speaking for
34 the White House, Department of Energy, the Environmental
35 Protection Agency, and even the Department of Homeland
36 Security. We have asked them, did you take economic impacts
37 into account when you proposed these regulations? Did you
38 perform a job impact analysis? Are you concerned as much
39 about protecting your existing jobs, particularly in the
40 manufacturing and energy sectors, as the President claims to
41 be about creating new jobs in the so-called green economy?

42 The problem for many of the people who send us here to
43 find solutions is not the green economy. It is the red ink
44 economy. Family debt, unemployment, collapsed home values,
45 mortgages underwater. These are real life problems we are
46 challenged to solve.

47 And witness after witness before the subcommittee has
48 traced the root of many of their challenges to the burden of
49 federal regulations that drive up cost of doing business

50 while adding no economic value. That is not to say that all
51 regulations are bad. I am thankful for the many good and
52 important federal regulations.

53 For example, every time I take a flight home to my
54 family I am thankful for the federal aviation regulations
55 that keep planes flying safely from one place to another.
56 When you step outside this building and take a deep breath,
57 even on a hot summer day, you can thank federal and State
58 regulations for the improved--improvement in air quality over
59 the past 10 or 20 years. I don't want the ranking member of
60 the full committee to faint on that statement, but we all
61 know that that is true.

62 And just yesterday this committee overwhelmingly
63 reported on a bill to set up an innovative new regime that
64 balances State management and federal standards to ensure
65 safe handling of coal ash whether it is recycled or disposed
66 of as waste.

67 But then we hear the horror stories about other
68 regulations. We have heard from witnesses about EPA
69 proposals to impose needless new burdens on hard rock mining
70 that duplicate what other federal and State agencies already
71 have on the books and which could put some facilities out of
72 business. We hear about proposed restrictions on recyclers
73 that could actually discourage beneficial reuse from fly ash

74 to printer ink.

75 Enough of the problems. We are not psychologists. We
76 need solutions to prevent the issues that have us in this
77 predicament. Today we will hear from the small business
78 sector, the farm community, the manufacturers, and other
79 business voices. We hope our witnesses will bring along some
80 suggestions to make things better.

81 How can we guide the Federal Government toward good
82 regulations? How can we make sure that the benefits really
83 do outweigh the economic costs? Can we be sensitive to
84 impacts on job opportunities?

85 We will also ask are there any laws in the book that can
86 become a model regulatory approach. If so, what is it, and
87 what other steps can Congress take to ensure the
88 Administration only proposes regulatory action that serve the
89 people instead of harming them.

90 And just on aside, when we travel back to our districts
91 every week and we hear from our farmers and our small
92 manufacturers and the small businesses, we hear this concern
93 everywhere we go. This hearing is an attempt to put a
94 national voice and bring forth the concerns that we are
95 hearing at home at a national level. So I appreciate you all
96 attending. I look forward to the hearing.

97 [The prepared statement of Mr. Shimkus follows:]

98 ***** COMMITTEE INSERT *****

|
99 Mr. {Shimkus.} And now I would like to yield to the
100 ranking member of the subcommittee, Mr. Green from Texas.

101 Mr. {Green.} Thank you, Mr. Chairman, for calling this
102 hearing because we all share an interest in sharing the
103 appropriate balance between cost and benefits in
104 environmental regulation. This committee has held numerous
105 hearings, examined the regulatory look back process
106 envisioned by the President's January Executive Order.
107 Executive Order 13563 calls for federal agencies to develop
108 preliminary plans for periodically reviewing existing
109 regulations to determine whether any should be modified,
110 streamlined, expanded, or repelled.

111 Well, I certainly share my colleague's concern about
112 certain regulations, and I do not believe that all
113 regulations or even the process of reviewing regulations are
114 overly burdensome and hurts the economy. By focusing on
115 regulatory cost of business we sometimes risk ignoring the
116 real, very real human costs of unchecked pollution and the
117 costs that these burdens place on the economy as a whole.

118 I will give you an example. For years I have worked
119 with local officials in Harris County, I have a very urban
120 industrial district in East Houston, Harris County, Texas, to
121 address a significant threat from a superfund site that is in

122 our area. The San Jacinto Waste Pits in the 1960s, a paper
123 mill that actually was in our district, dumped dioxin
124 contained waste in a waste pit in a sandbar in the San
125 Jacinto River. Unfortunately, the resource recovery,
126 Resource Conservation Recovery Act had not been passed and
127 neither had the EPA in--until 1969. Regulations of disposal
128 of dioxin waste from paper mills were not yet developed.

129 If these regulations had been placed, the waste would
130 not have been dumped where they were, and the superfund site
131 would not have been created. Now that the San Jacinto River
132 has reclaimed that sandbar, these vessels were below water,
133 examinations widespread and cleanup will be very costly.

134 Harris County officials and the EPA have been working
135 hard to ensure that taxpayers don't bear the cost of that
136 cleanup, and they are continuing the fight. Proper waste
137 regulations could have avoided these cleanup costs and these
138 litigation costs and could have protected the people in my
139 district. Examples like this demonstrate why it is so
140 important to review the laws and regulations to ensure we
141 protect public health, the environment, and the economy.

142 OMB estimated that the economic benefits of major
143 regulations over the last 10 years have found tremendous
144 benefits up to \$616 billion. The benefits outweighed the
145 cost by three to one and by as much as 12 to one in some

146 cases. The economic benefits of environmental regulation
147 offer reflected avoided costs, costs associated with treated
148 asthma attacks, costs associated with educating children with
149 developmental delays, costs associated with lost work or
150 productivity due to pollution and illnesses.

151 So while I agree we should carefully examine the
152 regulations to be sure we are not inadvertently harming jobs,
153 not all regulations are the enemy. They do protect the
154 public and to save the Federal Government money, and I yield
155 back my time.

156 [The prepared statement of Mr. Green follows:]

157 ***** COMMITTEE INSERT *****

158 Mr. {Shimkus.} The gentleman yields back his time.

159 The chair recognizes the vice-chairman of the

160 subcommittee, Mr. Murphy from Pennsylvania.

161 Mr. {Murphy.} Thank you, Mr. Chairman. By the way we

162 do have a psychologist on the committee.

163 Mr. {Shimkus.} And it is not me.

164 Mr. {Murphy.} While deliberations are continuing to

165 deal with our \$14.3 trillion deficit or debt, America is

166 concerned where we are going. June unemployment at 9.2

167 percent and the growth of only 18,000 jobs translates to a

168 meager 360 jobs per State. Let us keep in mind that one way

169 to balance America's budget, one very important way to deal

170 with America's debt is to grow jobs. For each 1 percent

171 decline in unemployment it is \$90 billion to \$200 billion per

172 year in federal revenue. That is a decrease in unemployment

173 compensation, that is an increase in federal revenues, that

174 is one and a half million jobs for every 1 percent decline in

175 unemployment.

176 Well we can't grow jobs, and we saddle job creators with

177 \$1.75 trillion in regulatory costs according to numbers from

178 the Small Business Administration. As we look at these

179 issues of how to deal with a wide range of energy sources, I

180 want to highlight another way we can create jobs.

181 Instead of sending \$129 billion a year to OPEC for
182 foreign aid to buy their oil, let us drill and use our own.
183 A bill I introduced, H.R. 1861, the Infrastructure Jobs and
184 Energy Independence Act, would yield between \$2.2 trillion
185 and \$3.7 trillion over a 30-year period in new federal
186 revenues, but it is not from raising taxes. It is just using
187 the standard royalties and lease agreements that come from
188 this, and it is not borrowing from China. This bill leads to
189 1.2 million jobs annually. It is jobs for the roughnecks,
190 the steelworkers, the electrician and laborers who work on
191 these rigs. It is jobs for those who take the oil and refine
192 it into gasoline. It is jobs for those who build all the
193 infrastructure as this bill also provides the money needed to
194 begin to build, rebuild our roads, bridges, locks, dams,
195 water and sewer projects, and it funds nuclear power plants
196 and the cleaning up of our coal-fired power plants.

197 So with our leaders over at the White House arguing over
198 how to take care of the debt, let us not forget Americans are
199 saying, grow more jobs to grow more taxpayers, not finding
200 ways of increasing taxes and not finding ways of increasing
201 regulations that move our jobs into submission.

202 And with that I yield back.

203 [The prepared statement of Mr. Murphy follows:]

204 ***** COMMITTEE INSERT *****

|
205 Mr. {Shimkus.} The gentleman yields back his time.

206 Seeing no other members on the minority side I would now
207 like to turn to the panel and welcome you for coming. I will
208 do an overall introduction of the table, and then we will go
209 individually. At the first--at our panel is Mr. William
210 Kovacs, Senior Vice President, Environment, Technology, and
211 Regulatory Affairs for the U.S. Chamber of Commerce.
212 Welcome.

213 Kirk Liddell, President and CEO of IREX Corporation on
214 behalf of the National Association of Manufacturers. Karen
215 Harned, Executive Director of National Federation of
216 Independent Business Legal Center, and Kevin Rogers,
217 President of the Arizona Farm Bureau Federation and on behalf
218 of the American Farm Bureau Federation.

219 So welcome. I would like to now recognize Mr. Kovacs,
220 your full statement is submitted for the record. You have 5
221 minutes for an opening statement. As you can see, we may not
222 be that pressed for time, so you don't have to kill yourself,
223 and we will be very patient with the clock here. So you are
224 recognized for 5 minutes.

|
225 ^STATEMENTS OF WILLIAM KOVACS, SENIOR VICE PRESIDENT,
226 ENVIRONMENT, TECHNOLOGY, AND REGULATORY AFFAIRS, U.S. CHAMBER
227 OF COMMERCE; KIRK W. LIDDELL, PRESIDENT AND CEO, IREX
228 CORPORATION ON BEHALF OF NATIONAL ASSOCIATION OF
229 MANUFACTURERS; KAREN R. HARNED, ESQUIRE, EXECUTIVE DIRECTOR,
230 NATIONAL FEDERATION OF INDEPENDENT BUSINESS LEGAL CENTER; AND
231 KEVIN ROGERS, PRESIDENT, ARIZONA FARM BUREAU FEDERATION ON
232 BEHALF OF AMERICAN FARM BUREAU FEDERATION.

|
233 ^STATEMENT OF WILLIAM KOVACS

234 } Mr. {Kovacs.} Thank you very much, Mr. Chairman and
235 Ranking Member Green and members of the committee. I would
236 like to spend the first minute of my 5 minutes on how we got
237 here into this regulatory chaos and then go into some
238 solutions.

239 Congress has been dealing with what they--what you might
240 call regulatory chaos since 1946. I mean, we have been
241 trying to get control of the agencies when you passed the
242 Administrative Procedure Act, which really was the first time
243 you required the agencies to be somewhat transparent, and you
244 involved the public.

245 But, unfortunately, over the years one of the things

246 that happened after this and within its structure is that
247 Congress passed vague laws that required the agencies to fill
248 in the blanks, and as the agencies began to fill in the
249 blanks, one of the things that happened was the courts began
250 in the 1980s to award deference to the agencies. So you had
251 an agency that was, one, filling in the blanks, and now the
252 courts were looking at them as the experts, and this
253 literally allowed them to go from filling in the blanks to
254 writing legislation. And this combination of delegation and
255 deference really has tipped the constitutional scales to the
256 Executive Branch.

257 Now, Congress has tried very, very hard, both
258 Republicans and Democrats, to gain control over the agencies.
259 In the '80s you passed the Regulatory Flexibility Act on
260 funded mandates information, Quality Act later on, data
261 access, paperwork reduction, and in all of your environmental
262 bills you have some of the best jobs analysis provisions in
263 the entire body of the U.S. Codes. You have done what you
264 need. I think the conclusion is best summed up when CBO and
265 GAO concluded in several studies that the agencies are
266 literally masters at manipulating the regulatory process. So
267 as you talk about cost benefit or finding out what the \$100
268 million threshold is, they know how to do the system better
269 than you will ever know how to do the system.

270 So what is it that we can do, because I think that is
271 really where you want to go. There are some issues that
272 would hopefully be bipartisan. The first is in very simple
273 terms you require the agencies to do just what Congress has
274 asked them to do for years. I mean, if you look, let us just
275 take Section 321 of the Clean Air Act. Between Section 321,
276 which requires continuing jobs analysis for all major
277 regulations, which you haven't gotten in 30 years, that is
278 just besides the point, Section 312 and 317, which requires
279 both the cost benefit and an economic assessment, all of
280 which Congress has in there. They are all mandated on the
281 agencies, so this isn't a discretionary. This isn't
282 something discretionary. Congress needs to start with that,
283 and frankly, even with the President's Executive Order, had
284 they decided instead of just doing an Executive Order, had
285 they demanded that the agencies implement what Congress has
286 passed, I think we would be further ahead.

287 Another statute that is really an excellent statute is
288 unfunded mandates. There are two provisions in unfunded
289 mandates relating to major federal actions, which are very
290 significant. One is that actually for every major role, the
291 agency that is over \$100 million, the agency actually has to
292 identify a reasonable number of regulatory alternatives, and
293 it must, under Congress's rule, select the least costly and

294 the least burdensome approach to it. And if they don't, then
295 the head of the agency must state why they selected a more
296 expensive approach. That is generally honored in the breach
297 or not even observed. UMRA also requires before the
298 publication of the rural statement of anticipated costs and
299 benefits that impact the national economy.

300 So a lot of what Congress is trying to do today on jobs
301 is there, and then you have the Information Quality Act,
302 which is perhaps one of the most significant transparency
303 acts that Congress has ever passed, and there you have a
304 requirement that the agencies actually use the most up-to-
305 date data, that they use peer reviews data based on sound,
306 whether it be science or economics. So you have four acts.

307 The second issue is permit streamlining. This is an
308 issue that Congress has agreed upon many times in the last
309 several years. We did this report called Project No Project,
310 and we just examined the number of permits that were not
311 being issued in the year 2010 for energy-based facilities,
312 and there were 351, but the key is that by denying those 351
313 facilities' permits, there was--we failed to capture about
314 \$1.1 trillion in economic activity for our GDP, and we failed
315 to capture--and we lost the ability to create 1.9 million
316 jobs annually during the construction period.

317 So this--not giving a permit is significant, and the key

318 point in this is that Congress in I think it was 2006, passed
319 the Permit Streamlining Provisions to safely move the Highway
320 Infrastructure Bill, bipartisan, and then the Stimulus Act
321 you had two very different senators, Senator Barrasso and
322 Senator Boxer, coming to an agreement that if you are going
323 to get projects into commerce, you were going to have to do
324 something with the permitting process, and they used--and I
325 will stop after this. And they used as part of that, they
326 required the most expeditious route possible for addressing
327 NEPA, and that was a categorical exclusion. The
328 Administration was able to use that simple provision over
329 180,000 times for 220,000 projects.

330 So Congress can come to grips with this, and they have
331 shown they can. It is just a question of going back and
332 enforcing the laws, I think, that you have already got on the
333 books.

334 [The prepared statement of Mr. Kovacs follows:]

335 ***** INSERT 1 *****

|

336 Mr. {Shimkus.} Thank you very much.

337 Now I would like to recognize Mr. Liddell for 5 minutes.

338 Sir, welcome.

|
339 ^STATEMENT OF KIRK W. LIDDELL

340 } Mr. {Liddell.} Thank you. Thank you, Chairman Shimkus,
341 Ranking Member--

342 Mr. {Shimkus.} If you would just hold--we are going to
343 get you all set up there.

344 Mr. {Liddell.} Yeah. Got to push the button.

345 Mr. {Shimkus.} Yeah. Thank you.

346 Mr. {Liddell.} Well, thank you for the opportunity to
347 testify before you today about reform of the regulatory
348 system and job creation.

349 My name is Kirk Liddell. I am the President and CEO of
350 IREX Corporation based in Lancaster, Pennsylvania,
351 Congressman Pitts' area. We are very proud of Congressman
352 Pitts. We are a specialty contracting business. Although we
353 are based in Lancaster, we have operations throughout the
354 United States and Canada. Today we employ approximately
355 1,500 individuals, many of whom are building trades union
356 members, and that is down from about 2,500, 2,700 in our peak
357 at 2008. So we are down about 1,000 employees. I serve as a
358 board member of the National Association of Manufacturers. I
359 am a member of their executive committee, and I am here today
360 testifying on their behalf.

361 Manufacturers provide good, high-paying jobs, and yet we
362 have lost about 2.2 million manufacturing jobs in this
363 economy since the recession, since December of 2009. We
364 have, in fact, generated about 250,000 net new jobs, but the
365 last couple of months that slowed. We have definitely slowed
366 the job creation over the last few months, and to regain
367 momentum and return to net manufacturing job gains we do need
368 improved economic conditions and improved government
369 policies.

370 And the deluge in regulation the past couple of years
371 has not helped us, has not helped us in our effort to create
372 jobs and to improve the economy. Unnecessary or cost
373 ineffective regulations dampen economic growth and hold down
374 job creation. Regulatory change and uncertainty impose high
375 costs on businesses, especially small business,
376 disproportionately small businesses, and of course, most
377 manufacturers are small businesses.

378 Unintended adverse consequence of government regulations
379 are also a huge problem and a growing problem. A current
380 example is the EPA's accelerated recondition--reconsideration
381 of the already stringent and costly ozone air quality
382 standard. The Manufacturers' Alliance studied this one
383 proposal and concluded that it could cost as many as 7.3
384 million jobs and add up to \$1 trillion in new regulatory

385 costs annually between 2020 and 2030.

386 And on behalf of manufacturers I thank Chairman Shimkus,
387 Representative Barrow, and several other members of this
388 subcommittee for sending a letter to EPA Administrator Lisa
389 Jackson in late June, urging the EPA to defer its
390 reconsideration until 2013, which is the normal 5-year
391 reconsideration timeframe. And I would encourage other
392 members of this subcommittee to join that effort.

393 Now, at a broader level there are a number of powerful
394 and potentially bipartisan regulatory reforms to choose from.
395 One would be an easy one, I believe, would be for Congress to
396 confirm the authority of OMB's Office of Regulatory Analysis
397 to review the regulations issued by independent regulatory
398 agencies and to ensure their adherence to strong analytical
399 requirements.

400 We do applaud the President's recent request to
401 independent agencies that they conclude retrospective
402 regulatory reviews of their own regulations. We believe
403 giving him the formal authority to do so would compliment
404 this voluntary request and importantly be a positive sign of
405 seriousness about regulatory reform.

406 Another helpful reform would be strengthening the
407 Regulatory Flexibility Act to ensure that agencies engage in
408 thoughtful analysis, of proposed rules, and their economic

409 impact on small businesses. Most manufacturers, as I said,
410 are small businesses, and an agency should not be permitted
411 to view the law as a mere formality. I would urge the
412 subcommittee's support of H.R. 527, the Regulatory
413 Flexibility Improvements Act, which was favorably recorded
414 out of both the Judiciary and Small Business Committees.

415 Congress plays an important role within the regulatory
416 process but does not have a group of analysts who develop
417 their own cost estimates of proposed or final regulations.
418 OMB has OIRA to review regulations, and Congress, perhaps
419 through the Congressional Budget Office, should have a
420 parallel office that analyzes and reviews the impact of
421 significant regulatory initiatives.

422 To truly build a culture of continuous improvement and
423 thoughtful, retrospective review of regulations, the existing
424 regulations should automatically sunset unless they are
425 fervently shown to have strong continued justification.

426 In my written statement I concluded additional broad-
427 based regulatory reform examples for your consideration. I
428 appreciate the opportunity to provide testimony today on
429 behalf of manufacturers. I applaud you for holding today's
430 hearing, and I would be happy to respond to any questions you
431 have.

432 [The prepared statement of Mr. Liddell follows:]

433 ***** INSERT 2 *****

|
434 Mr. {Shimkus.} Thank you very much.

435 And now I would like to recognize Ms. Karen Harned from
436 the Executive Director, National Federation of Independent
437 Business Legal Center. Welcome. You have 5 minutes.

|
438 ^STATEMENT OF KAREN R. HARNED

439 } Ms. {Harned.} Thank you. Good morning, Chairman
440 Shimkus and Ranking Member Green.

441 NFIB, the Nation's largest small business advocacy
442 organization, commends the subcommittee for examining
443 legislative solutions like those proposed in H.R. 527, which
444 would grow the economy by reducing overly-burdensome
445 regulations. The NFIB Research Foundation's Problems and
446 Priorities, has found unreasonable government regulations to
447 be a top ten problem for small businesses for the last 2
448 decades.

449 Job growth in America remains at recession levels.
450 Small businesses create two-thirds of the net new jobs in
451 this country, yet those with less than 20 employees have shed
452 more jobs than they have created every quarter but one since
453 the second quarter of 2007, according to the Bureau of Labor
454 Statistics. Moreover, for the first 6 months of 2011, 17
455 percent of small businesses responding to the NFIB Research
456 Foundation's Small Business Economic Trends cite regulation
457 as their single most important problem. Reducing the
458 regulatory burden would go a long way toward giving
459 entrepreneurs the confidence that they need to expand their

460 workforce.

461 NFIB does believes that Congress must take actions like
462 those proposed in H.R. 527 to level that playing field. One
463 key reform would expand the Small Business Regulatory
464 Enforcement and Fairness Act and its Small Business Advocacy
465 Review Panels to all agencies, including independent
466 agencies. In so doing, regulators would be in a better
467 position to understand how small businesses fundamentally
468 operate, how the regulatory burden disproportionately impacts
469 them, and how the agency can develop simple and concise
470 guidance materials.

471 In reality, small business owners are not walking the
472 halls of federal agencies lobbying about the impact of
473 proposed regulation on their business. Despite great strides
474 in regulatory reform, too often small business owners find
475 out about a regulation after it has taken affect. Expanding
476 SBAR panels and SBREFA requirements to other agencies would
477 help regulators learn the potential impact of regulations on
478 small business before they are promulgated. It also would
479 help alert small business owners to new regulatory proposals
480 in the first instance.

481 Regulatory agencies often proclaim indirect benefits for
482 regulatory proposals, but they decline to analyze and make
483 publicly available the indirect costs to consumers, such as

484 higher energy costs, jobs lost, and higher prices. The
485 indirect cost of environmental regulations is particularly
486 problematic. It is hard to imagine a new environmental
487 regulation that does not indirectly impact small business.
488 Whether a regulation mandates a new manufacturing process,
489 sets lower emission limits, or requires implementation of new
490 technology, the rule will increase the cost of producing
491 goods and services. Those costs will be passed onto the
492 small business consumers that purchase them.

493 But does that mean that all environmental regulation is
494 bad? No, but it does mean that indirect costs must be
495 included in the calculation when analyzing the costs and
496 benefits of new regulatory proposals.

497 NFIB member Jack Buschur of Buschur Electric in Minster,
498 Ohio, for example, recently testified that because of the
499 time and financial costs of EPA's lead renovation and repair
500 rules, which took effect in April of 2010, he will no longer
501 bid on residential renovation projects. Because he will no
502 longer bid on these projects, Mr. Buschur will not be hiring
503 new workers at his company, which has 18 employees, and that
504 is down from 30 employees in 2009.

505 NBIB member Hugh Joyce of James River Air Conditioning
506 in Richmond projected in testimony that new greenhouse gas
507 regulations will add 2 to 10 percent in consulting costs to

508 his projects. This is particularly telling because Mr. Joyce
509 is committed to doing business in an environmentally-friendly
510 manner. He is a member of the U.S. Green Building Council
511 and conducts LEED-certified green housing projects.

512 The moratorium on off-shore drilling in the Gulf of
513 Mexico has indirectly hurt those small businesses that depend
514 on that industry. It has impacted all small business owners
515 through further dependence on foreign oil and higher gas
516 prices. Energy costs were ranked as the second biggest
517 problem small business owners face in the NFIB Research
518 Foundation's most recent Problems and Priorities.

519 Other regulatory forums that would help minimum
520 unintended consequences of regulation on small business
521 include reforms that would strengthen the role of SBA's
522 Office of Advocacy, increase judicial review within SBREFA,
523 insure agencies focus adequate resources on compliance
524 assistance, and waive fines and penalties for small
525 businesses the first time they commit a non-harmful error on
526 regulatory paperwork.

527 With job creation continuing at recession levels,
528 Congress needs to take steps to address the growing
529 regulatory burden on small businesses. The proposed reforms
530 in H.R. 527 are a good first step.

531 Thank you.

532 [The prepared statement of Ms. Harned follows:]

533 ***** INSERT 3 *****

|

534 Mr. {Shimkus.} Thank you very much.

535 Now we would like to recognize Mr. Rogers for 5 minutes.

|
536 ^STATEMENT OF KEVIN ROGERS

537 } Mr. {Rogers.} Thank you. Good morning. My name is
538 Kevin Rogers. I am a fourth generation farmer from the
539 Phoenix area. My family farms over 7,000 acres. We produce
540 cotton, alfalfa, wheat, barley and corn silage. I farm with
541 my dad and my brothers and my sister and my uncle. I
542 currently serve as President of the Arizona Farm Bureau
543 Federation. I am here on behalf of the American Farm Bureau.
544 I also have served on the USDA Air Quality Task Force for the
545 past 10 years. I am pleased to be able to testimony before
546 this subcommittee.

547 While there are many issues dealing in agriculture, this
548 committee's jurisdiction can help us to improve, I wanted to
549 touch on just a few of the more serious issues we have in
550 front of us today.

551 The first issue is the pending EPA decision on revising
552 the Ambient Air Quality Standard for coarse particulate
553 matter, PM10, otherwise known as farm dust. Unlike the
554 smaller fine particles, course particulate matter is
555 primarily naturally occurring and made up of dirt and other
556 crustal materials. It occurs while driving on unpaved roads,
557 using tractors in the fields, moving livestock from pen to

558 pen and pasture to pasture.

559 Also, unlike fine particles where the health impacts are
560 well studied, EPA says for coarse PM it would be appropriate
561 to consider either retaining or revising the current standard
562 based on the science. Even with the lack of data the Clean
563 Air Science Advisory Committee, CASAC, recommends that the
564 standard level be reduced. EPA is currently considering this
565 option. Many areas in urban America already have difficulty
566 meeting the current standard. My own county, Maricopa
567 County, is currently non-attainment, serious non-attainment,
568 and we are having a hard time meeting the current standard we
569 have.

570 Just a couple of weeks ago you probably saw on the news
571 the big wall of dust that came through out valley, mile high,
572 50 miles across, it swept through Phoenix. We certainly hope
573 that they will declare that a naturally-occurring event and
574 give us the exception to the standard for that day.

575 A recent study shows there will be many more rural areas
576 that will not be able to meet a revised standard. This will
577 result in more regulation of farming and ranching activities
578 such as restrictive speed limits on unpaved roads,
579 restrictions on when and how we can work in the fields or
580 move livestock as States attempt to get back into the
581 attainment area.

582 We favor retaining the current standard, especially
583 where there is little or no science to justify the change of
584 it. We support H.R. 2458 from Mr. Flake that would put a
585 review of the Ambient Air Quality Standards on a more
586 reasonable 10-year cycle instead of the current 5-year cycle.
587 Too often EPA is revising the standards before States have
588 had time to comply with the previous standard. H.R. 2458
589 would correct this situation.

590 We also support H.R. 2033 that would exclude naturally-
591 occurring events from federal regulation unless it causes
592 serious adverse health and welfare affects.

593 The second issue that I would like to address is the
594 continuing regulation of greenhouse gases by EPA. As we have
595 testified previously before this committee, farmers and
596 ranchers receive a double economic jolt from such
597 regulations.

598 First, any costs incurred by utilities, refineries,
599 manufacturers, and other large emitters to comply with
600 greenhouse gas regulatory requirements will pass onto the
601 consumers those costs of production, namely farmers and
602 ranchers. The costs that will be passed down will result in
603 higher fuel and energy costs to grow food and fiber. Farmers
604 and ranchers, on the other hand, cannot pass these increased
605 costs of production.

606 Secondly, farmers and ranchers will also incur direct
607 costs as a result of the regulation of greenhouse gases by
608 EPA. For the first time any farms and ranch operations will
609 be subject to direct new source review, prevention of
610 significant deterioration, construction permits, and Title V
611 permits requirements under the Clean Air Act. EPA itself has
612 estimated there are over 37,000 farms that will emit between
613 125,000 tons of greenhouse gases per year and thus have to
614 attain the Title V permit. Using EPA's numbers, just the
615 expense of obtaining these permits could cost agriculture
616 over \$866 million.

617 On the other hand, this costly burdensome regulatory
618 scheme will produce very little, if any, environmental
619 benefit. Unless and until the countries of the world agree
620 on an international treaty on greenhouse gas emissions,
621 unilateral regulation of greenhouse gases by EPA will have
622 little environmental effort. The Farm Bureau strongly
623 supports H.R. 910, which passed the House.

624 In light of the recent Supreme Court decision in
625 American Electric Power versus Connecticut, we believe
626 additional legislation is necessary to clarify that entities
627 cannot be sued just because they emit greenhouse gases. The
628 court left open the issue of standing and common-law actions
629 in the absence of EPA regulatory authority. Legislation is

630 needed to resolve those issues.

631 We thank the subcommittee for its attention to the needs
632 of rural America, and I look forward to answering your
633 questions. Thank you.

634 [The prepared statement of Mr. Rogers follows:]

635 ***** INSERT 4 *****

|
636 Mr. {Shimkus.} Thank you very much, Mr. Rogers. Thank
637 you all for your opening statements, and now I would like to
638 recognize myself for 5 minutes for the first round of
639 questions.

640 And I want to start with Mr. Kovacs because you laid out
641 a history of how we got where we are at. You also, I think,
642 implied that if we just enforce some of the laws on the books
643 this wouldn't happen. I have been interested in this whole
644 judgment fund issue where the environmental groups or
645 concerned citizens can sue a federal agency and then there is
646 a settlement out of court that is where the plaintiffs want
647 to go without going through the legislative process, and then
648 we pay the court costs.

649 Can, I mean, that sounds pretty crazy to me. Is that
650 the way that works?

651 Mr. {Kovacs.} We call it sue and saddle, but, yes, the
652 judgment fund is part of it. What--it is actually a new
653 twist to the regulatory process. Historically you would go
654 through a rule making, you would give input to--you would
655 take input, you would propose the rule, you would respond to
656 the rule, and that eventually would be litigated.

657 What is happening now is that the agency is being sued
658 and rather than defending itself it is entering into a

659 consent decree and as part of the consent decree it agrees to
660 do two things. One is it agrees to move forward with
661 regulation that the environmental group or group wanted, and
662 two, in many instances it agrees also to pay the attorneys'
663 fees. The attorneys' fees comes out of the judgment fund,
664 and the judgment fund has been around literally since the
665 beginning of the Republic but around 1995, it appears that it
666 was taken off the books, and it is now considered a
667 permanent, unlimited, non-disclosed fund. And even if you go
668 onto the Treasury Department's website, what you find is a
669 lot of computer code, but you have no idea who the payments
670 are made to. And there have been some attorneys in the
671 United States who have done some discovery in very narrow
672 areas, and the numbers are significant. They are in the tens
673 and perhaps hundreds of millions or more.

674 So one of the things that needs to be done if you are
675 going to--you have two problems with that process. One is
676 should the agencies be defending itself. It is one thing if
677 the agency thinks that it is completely wrong, and that
678 happens, and the agency has the discretion to settle, of
679 course, but when you begin a systematic program of sue and
680 saddle where the agency is doing this on a regular basis, and
681 I think we have got, we are up to 16 of these in the last
682 several years, this is becoming more of a pattern of--more of

683 a practice.

684 And then the second part is is that there is--the
685 agencies are unwilling, meaning mainly the Treasury
686 Department, to provide any of the information on who is
687 getting the claim. So the government really has no idea.
688 You have no idea who is being paid.

689 Mr. {Shimkus.} That is astounding, and I think that
690 will give us some focus on something that we should be able
691 to have access to. All citizens should know where their tax
692 dollars are going and who is making--we are making payments
693 to.

694 Ms. Harned, I saw you kind of light up. Do you want to
695 add anything to that?

696 Ms. {Harned.} No, other than just--

697 Mr. {Shimkus.} I want to go quickly because I got one
698 more question.

699 Ms. {Harned.} Oh. Okay.

700 Mr. {Liddell.} I would like to add--

701 Mr. {Shimkus.} Yes, sir.

702 Mr. {Liddell.} --if I may. I think that has
703 implications for OIRA's regulatory review process, too, when
704 it is a sue and saddle process. I think both in terms of
705 time and substance. It ties their hands somewhat on what
706 kinds of review they can do on agency rules.

707 Are you familiar with that, Mr. Kovacs? No? Okay.

708 Mr. {Shimkus.} Okay. Yeah. No, and let me just--is
709 there any truth to the rumor that there may be encouragement
710 by the federal agency, in this case the EPA, encouraging this
711 type of process to move a regulation faster, and have you,
712 Mr. Kovacs, do you--I have heard that claim.

713 Mr. {Kovacs.} Well, we have heard a lot of claims. The
714 difficulty is when you have a non-disclosed, unlimited
715 appropriation and you have an agency very willing to not
716 defend its own actions, it invites that kind of conduct.
717 Whether or not it is occurring, that is something really
718 Congress is going to have to determine. Some of these
719 lawsuits are brought, and they are relatively quickly
720 settled. Others do happen over time. One of the things that
721 we are looking at is how many of these exist, because it is
722 not just to--it is not just on regulations that are not on
723 the books and someone wants it on the books, they are also
724 right now--some of these lawsuits are opening up regulations
725 that have been settled for 20 and 30 years such as coal ash,
726 ozone--

727 Mr. {Shimkus.} Let me--thank you very much because I
728 want to get to Mr. Rogers just for a second. The--because I--
729 --when Administrator Jackson was here I put up on the screen
730 the harvesting of soybeans and the dust that comes after

731 that, that organic material. I have used that quite a bit to
732 talk about the dust regulations to some extent where this are
733 some environmental attacks on me saying that that is a bogus
734 claim, that these dust regulations will not hurt agricultural
735 America. Obviously your statement says otherwise.

736 Mr. {Rogers.} Well, I happen to farm right in the
737 Phoenix area, and we have been serious non-attainment for a
738 number of years, and those farmers who are impacted there by
739 the urban area truly have to farm under a different set of
740 rules and regulations than anyone else in the country does,
741 and so as our rural America becomes in a non-attainment area,
742 irregardless of where they are, there is different things you
743 have to do because what you do on the farm is now under a
744 microscope, and if those monitors trigger, wherever the
745 monitors may be located, you will have to change your
746 practices to reduce PM10 from your tractor operations. We do
747 it every day.

748 Mr. {Shimkus.} You either don't--you either will stop
749 farming or you will bring water trailers trailing behind
750 agricultural machines to knock the dust down before it gets
751 into the air. Is that true?

752 Mr. {Rogers.} Well, you have to figure out ways to farm
753 without disturbing the soil in any way, and as we have told
754 EPA and as we have told our Department of Environmental

755 Quality--

756 Mr. {Shimkus.} I think you did that with a stick. You
757 put a stick in the ground--

758 Mr. {Rogers.} Yeah.

759 Mr. {Shimkus.} --put a corn kernel in the ground.

760 Mr. {Rogers.} We tell them sooner or later you have to
761 disturb the soil.

762 Mr. {Shimkus.} I am way over my time, and I would like
763 to recognize the Ranking Member, Mr. Green, for 5 minutes.

764 Mr. {Green.} Thank you, Mr. Chairman, and I have some
765 questions. I appreciate our panel for being here.

766 Mr. Kovacs, you talked about the judgment fund that was
767 created, and I have a lot of years in the State Legislature,
768 and I know Congress, that was created because at one time if
769 a business sued the Federal Government for anything, they had
770 to come to Congress to be able to get, even though the Judge
771 may have said, okay. Federal Government was wrong, you owe
772 this money, they had to come to Congress to get permission.
773 We had to pass legislation on every judgment, and that is why
774 you have that.

775 In the State of Texas we had that problem, too, my first
776 years in the '70s in the legislature. We would have to
777 approve literally of every judgment against the State, and
778 frankly I had a lot of small businesses and businesses who

779 were looking for assistance because they couldn't. Now,
780 maybe it is being--what is happening in the court system is
781 wrong, and we need to look at that, but I think attacking the
782 judgment system you may have some of your members of the
783 Chamber or the independent business folks or even the Farm
784 Bureau who may be concerned that if they want a judgment from
785 a federal court, that it would be up to Congress to actually
786 pay for it.

787 Do you want to respond to that?

788 Mr. {Kovacs.} Oh, sure. I mean, as I said, the
789 judgment fund has been around since the beginning of the
790 republic. I mean, when you have judgments against you, the
791 United States has to pay. No one is arguing that.

792 What happened in 1995 is you stopped keeping track of
793 it, and that seems to be where the problem is because in--

794 Mr. {Green.} Maybe that is an entitlement we need to
795 look at.

796 Mr. {Kovacs.} Well, it may be, but the difficulty is it
797 is not disclosed, and it is unlimited, and it is permanent,
798 and you have in the system now because we didn't have this at
799 the time, a group--groups that would sue and then enter into
800 settlement agreements where the agency would agree to pay the
801 attorneys' fees. There is--the agency should be litigating
802 to defend its position.

803 Mr. {Green.} And I agree, and I don't know if our
804 committee has jurisdiction over that, you know. The
805 Judiciary Committee probably has it but I think it is a
806 problem because, you know, it sounds like it is a sweetheart
807 deal, and we may need to address that.

808 The other issue is I know it was brought up on sunset
809 legislation, and I have been a supporter of sunset
810 legislation, although it has never passed both the House and
811 the Senate and--because, again, my experience in the
812 legislature where we sunsetted State agencies every 10 to 12
813 years, and I was on the Sunset Commission, and it was a
814 terrible job because for a part-time legislature because you
815 are actually full time while you are on that commission.

816 And Congress, I guess our compromise is we have
817 reauthorizations, and you know, bills we do here all the time
818 we put a 5-year reauthorization, 7 years, sometimes 10 years,
819 sometimes Congress doesn't reauthorize them so they end up
820 being a rider on appropriations on a yearly basis. That is,
821 I guess, our compromise but I agree that the sunset
822 legislation would be good, although it may be a little
823 duplicative of what we do already with reauthorizations.

824 As I said in my opening statement the committee has held
825 numerous hearings to examine the regulatory look back process
826 envisioned by the President's Executive Order of 13563, calls

827 for federations to develop primarily plans. My understanding
828 that EPA has drafted such a plan, and it is opened up for
829 public comment.

830 My question did each of your organizations provide
831 public comment to the EPA? Did the Chamber of Commerce and--

832 Mr. {Kovacs.} I am not sure we have yet, but I know we
833 will be.

834 Mr. {Green.} Okay.

835 Ms. {Harned.} Yes. NFIB has.

836 Mr. {Green.} Have you? Well, that is one of the
837 important things about it because even when, you know, you
838 have to be at the table, and my, believe me, probably more so
839 than a lot of folks coming from my area, we have differences
840 with EPA on a regular basis. But we need to make sure we are
841 there.

842 Do you think EPA and the other agencies are effectively
843 involving stakeholders in the regulatory review process, and
844 what ways could they improve that, their efforts? I mean,
845 EPA is just one agency but it is pretty all-encompassing I
846 know from you all's businesses.

847 Mr. {Kovacs.} Well, I mean, on some of the major
848 regulations, for example, like on the comment period for
849 greenhouse gas, an extension of time was asked for, and it
850 was not granted, and that was thousands of pages of

851 scientific documents that people were trying to review.

852 So, you know, one of the things I think you will find is
853 that there is a disconnect between what I would call the
854 economically-significant regulations and everything else.
855 And if you look at the 170,000 regulations that have been
856 adopted by the Federal Government across since 1976, there is
857 only about, roughly about 100 to 200 each year that are
858 economically significant. A lot of the regulations as you
859 have heard today are--have general support. They are
860 actually business practices that people want and need.

861 The difficulty, and I can't stress this enough, is that
862 when Congress began passing these broad statutes and
863 delegating powers to the agencies, that was probably
864 workable, but when the courts gave the agencies deference,
865 you actually--you got yourself in a position where the law
866 you passed, which was reasonable, once you added deference to
867 it became something where they tipped the balance, the
868 Constitutional balance of checks and powers. And that is the
869 difficulty you have in today and with a divided government it
870 is very difficult to get that power back, and I think that is
871 what we are all struggling with.

872 Mr. {Green.} And I know I am out of time, Mr. Chairman,
873 but we still have access to the court system. If EPA does
874 something that is, like you said, that is different from what

875 the law--then the law should be interpreted, we still have
876 access to the judicial process, but, again, that is a long
877 process, but because I know at least in the State of Texas we
878 have a lot of experience in suing EPA but--and sometimes
879 coming to agreed settlements, which is, you know, kind of
880 dividing of the child, I guess.

881 Mr. Chairman, thank you for your time.

882 Mr. {Shimkus.} Thank you, and the chair recognizes the
883 gentleman from Pennsylvania, Mr. Pitts, for 5 minutes.

884 Mr. {Pitts.} Thank you, Mr. Chairman, and welcome.

885 Thank you to the witnesses, especially to Kirk Liddell from
886 Lancaster, and I will start with you, Kirk.

887 How does the current regulatory environment in the
888 United States prevent NAM members from being what you cite as
889 your number one issue in your strategy being the best country
890 in the world, the headquarter company, and to attract foreign
891 investment? What specific things from your own company's
892 experience should be enacted into law to make companies want
893 to make their base of operations headquartered in the U.S.?

894 Mr. {Liddell.} Congressman, there are many, many
895 regulations, of course, that affect the cost of doing
896 business in the United States, and oftentimes the cost of
897 these same activities outside of the United States is less.
898 We, for example, we are primarily an employer. We hire a lot

899 of people, and the cost of complying with various regulations
900 is a true cost of hiring people. We have to--we are kind of
901 neutral on this. We take the world as it is, and we
902 recognize that those are costs we have to bear if we have to
903 hire people in the United States.

904 So we try to find other ways to satisfy those needs.
905 Sometimes that is hiring people outside of the United States
906 where we can get the work done. We have an office in India,
907 for example, where we can do a lot of back office things much
908 less expensively and completely, you know, legally and the
909 like.

910 So I think in that case didn't force us to relocate
911 outside of the country, but that is just an example, and I
912 know a lot of the firms, the big public firms that deal with
913 securities issues and the like are finding a significant
914 extra cost of raising capital and conducting business in the
915 United States and are now, you know, relocating outside of
916 the country and the like.

917 Mr. {Pitts.} Besides the tax code if you could
918 prioritize the next most important--is regulatory uncertainty
919 number two? What would be, you know--

920 Mr. {Liddell.} Well, I don't have a clear list in my
921 mind. I would be happy to get back to you on that--

922 Mr. {Pitts.} Yeah.

923 Mr. {Liddell.} --but I just mentioned the securities,
924 the SEC rules and the accounting rules and the like that are,
925 Sarbanes Oxley and the like, that are handicapping U.S.
926 companies, you know, vis-à-vis foreign--

927 Mr. {Shimkus.} If the gentleman would yield?

928 Mr. {Pitts.} Yes.

929 Mr. {Shimkus.} If you would submit that to us, that
930 list--

931 Mr. {Liddell.} Sort of a priority list of things that
932 are affecting--

933 Mr. {Shimkus.} Right. That would be helpful to us.

934 Mr. {Liddell.} I would be happy to do so.

935 Mr. {Pitts.} Thank you. Ms. Harned, many times the
936 Executive Branch agencies do economic impacts of their rules,
937 and either do not apply them as part of the final regulation
938 consideration or possibly misapply them. How important is
939 the application of this criterion and any rule, and how do we
940 prevent bad outcomes from occurring?

941 Ms. {Harned.} Right, and that really is the key is all
942 of the front-end work that I know truthfully is frustrating
943 to the regulators because they think that it just makes it
944 harder for them to get a reg out, is so critical, and
945 following what we want to see is following the letter and the
946 spirit of the law on the front end, making sure that all the

947 costs are assessed, making sure that all the stakeholders are
948 brought to the table.

949 Like Mr. Green was alluding to, I mean, that continues
950 to be a problem quite frankly within different agencies,
951 including the EPA with rules that they are more willing to
952 say, oh, this isn't going to have a significant impact
953 because they know once they say that there is going to be a
954 lot more work they are going to have to do on the front end.

955 But the bottom line from our members' perspective is
956 doing this front end work, doing these analyses, making the
957 agencies hold their feet to the fire on this is critical
958 because once the regulation is out, pulling it back is next
959 to impossible.

960 Mr. {Pitts.} Thank you, and Mr. Kovacs, do you believe
961 that Congress delegates too much regulatory authority,
962 discretion, thereby allowing the Executive Branch to write
963 and rewrite Congressional intent?

964 Mr. {Kovacs.} Well, I think you have delegated a
965 sufficient amount of regulatory authority that the courts
966 even in the most recent, Connecticut v AUP, put a significant
967 amount of the opinion, even though it was about Congressional
968 delegation, and once you delegate this broad authority to the
969 agencies, they are recognized by the courts as the expert,
970 and at that point in time they are writing the law. Yeah.

971 Mr. {Shimkus.} Would the gentleman yield on that?

972 Mr. {Pitts.} Yeah.

973 Mr. {Shimkus.} So would you say that since then the
974 courts really default to the agency because they assume that
975 they are the experts. So there is really--talking about
976 people could go to court, but you already got the courts
977 almost--it is way disproportionate to the federal agency.

978 Mr. {Kovacs.} That is correct. You have--absolutely.
979 You have several difficulties there. You, one, you put a
980 relatively low standard in the Administrative Procedure Act
981 as to what the agencies had approved. If they can show
982 something in the record, that is sufficient for the court to
983 find in their favor.

984 Then in the 1980s when courts gave them deference, it
985 literally said not only does the agency not have a high
986 burden of proof, but we are going to recognize the agencies
987 as the expert.

988 So you have really--the structure of vague loss plus the
989 delegation plus deference has put Congress in quite a bind.

990 Ms. {Harned.} If I may, there is a reform in H.R. 527
991 that speaks to this and speaks to the question that you had
992 asked me, too, which is when the Office of Advocacy and an
993 agency are to have a disagreement, which does happen with
994 regards especially to economic impact on small business, H.R.

995 527 would require deference to be made to the Office of
996 Advocacy, and that is a support, that is a reform that we
997 think would be very helpful in this regard in particular.

998 Mr. {Pitts.} Thank you, Mr. Chairman. I yield back.

999 Mr. {Shimkus.} Thank you. Very good round of
1000 questions.

1001 Now I would like to recognize Mr. Latta from Ohio, and
1002 just as an introduction he has really been focused on this
1003 issue, especially in his manufacturing sector in the State of
1004 Ohio.

1005 So Mr. Latta, you are recognized for 5 minutes.

1006 Mr. {Latta.} Well, thank you very much, Mr. Chairman,
1007 and I appreciate this hearing today, and I will let you know
1008 right off the bat I have worked with everyone sitting at this
1009 table with your organizations in my State. I not so long ago
1010 had asked NAM to give me numbers of members on the Energy and
1011 Commerce Committee. We represented about 1.7 million
1012 manufacturing jobs several months ago. The new numbers I got
1013 just last week we are down to about 1.55 million jobs.

1014 You know, jobs is the number one issue that this
1015 Congress has got to be facing, and everything that I talk
1016 about is about jobs, because they are fleeing this country,
1017 they are fleeing our States, and I am worried, because first,
1018 I used to be the largest manufacturing district in the State

1019 of Ohio. I have dropped to number two. Several years ago my
1020 district was the eighth largest manufacturing district in
1021 Congress. I also represent the largest agricultural district
1022 in the State of Ohio. We are large in row crops, and so
1023 everything comes right down to jobs, jobs, jobs.

1024 And I was very interested in your testimony that you all
1025 had talked about today because, you know, when you are
1026 talking about manufacturing and manufacturing product what is
1027 scaring me now is when I talk to my manufacturers in my
1028 district, this is what they are telling me.

1029 They have come up with a great idea how to make a new
1030 pencil, and wholesalers say to them, this is fantastic. Now
1031 tell me how you can make this in China at a cheaper price
1032 that we can sell it. Not making it here but making it
1033 someplace else, even though we have got the idea right here
1034 in this country.

1035 And if I could, just to ask a few questions, and I know
1036 my time is short, but as we are looking I know that--a couple
1037 questions I would like to ask each of you.

1038 I have got--my folks that manufacture in my district
1039 that when I have talked to them and after I have heard from
1040 the problems they have had with regulators say, why didn't
1041 you contact me, and they said they were afraid to. And when
1042 the regulators out there have got the fear of God in the

1043 people that are in this country that are supposed to be
1044 creating jobs that they don't even contact their elected
1045 representatives, there is something wrong.

1046 So, first, I would like to ask, you know, on that
1047 statement, right down the line for all of you, you know. Is
1048 there a fear that people have about speaking up about
1049 regulations because of the retribution that they get from
1050 those regulators?

1051 Ms. {Harned.} If I could, this is a very big problem
1052 that the small business owners we represent at NFIB tell us
1053 about constantly, and what we have seen definitely within the
1054 last 2 to 3 years is a--or 2 years, I guess, is a big shift
1055 and you are seeing it in the budget and also in the culture
1056 within the agencies to go back to this gotcha type of
1057 mentality. And it is very, very disheartening to our members
1058 and really almost can be paralyzing to them when we are
1059 trying to get them to, you know, even know the rules that do
1060 the right thing, they feel like they can't even ask anybody
1061 for help to know what that would be because of, you know,
1062 what microscope that might put in front of their business.

1063 Mr. {Liddell.} I would say in general we are not afraid
1064 to contact regulators. We do quite a bit, actually, and that
1065 is not the issue. It is more just do we want to get involved
1066 in all that, the time, the effort, the, you know, it is

1067 oftentimes better just, you know, kind of go your own way and
1068 keep a low profile and just, you know, move on.

1069 There is some concern with OSHA and some of the other
1070 agencies like that that you will--there will be some
1071 retribution, but personally that hasn't been a big issue.
1072 But, you know, we are busy people. We don't really have time
1073 to spend a lot of time with you all and regulators and
1074 everybody else. We have a job to do.

1075 Mr. {Kovacs.} I take a little bit different or maybe a
1076 similar look. I don't know that they are afraid of the
1077 regulator. I think they are afraid of the process, and let
1078 me just give you a quick example.

1079 If you are a company and you are trying to get an EPA
1080 permit, you have 40,000 pages of regulations. Any provision
1081 on any of those 40,000 pages will stop you getting a permit,
1082 which is why I keep on talking all this time about permit
1083 streamlining.

1084 So if you can be stopped by anything and let us--
1085 somebody mentioned Title V, Title V of the Clean Air Act,
1086 that is merely a paperwork requirement, but once you file
1087 that paperwork, anyone in the United States under laws passed
1088 by Congress can sue you to stop your permit. So you have
1089 40,000 pages of problems, any one of which you miss is gone,
1090 and the second thing is once you file for a permit, anyone in

1091 the United States can sue you.

1092 So I think they are afraid of the process, and no one
1093 wants to put their head up to be visible. They just want to
1094 move through.

1095 Mr. {Rogers.} My comment as well, you know, our folks
1096 in agriculture would just as soon stay on the farm and
1097 continue to grow the food and fiber for this country, and
1098 when you talk about the fear, I think deep down they all
1099 assume, well, we got to grow food. What are they going to--
1100 how can they do that to us, and I think it is more of an
1101 education issue for them to get involved and understand what
1102 could be coming so they do contact their representatives and
1103 say, hey, what we do every day is in peril, it is in
1104 jeopardy, and we need to reach out to you folks and ask you
1105 for help to make sure you understand what is going on.

1106 There is always that fear of retribution when you step
1107 up to the plate. In Arizona in Maricopa County we actually,
1108 when we understood what the Clean Air Act said, that it is a
1109 health-based standard, that it doesn't matter if you only get
1110 8 inches of rain versus 50 inches of rain, the standard is
1111 the same across the board, we knew we had to come to the
1112 table because EPA has the hammer. Ultimately they can come
1113 in and FIP you, Federal Implementation Plan, which could put
1114 us out of business depending on how that goes.

1115 So we came to the table as a community and sat down and
1116 negotiated a plan for best management practices so farmers
1117 will reach out and be educated about what is going on, but I
1118 think there is a fine line that you bring up. Thank you,
1119 sir.

1120 Mr. {Latta.} Well, thank you very much, and my time has
1121 expired, and I yield back.

1122 Mr. {Shimkus.} The gentleman yields back his time.

1123 The chair recognizes the gentleman from Colorado, Mr.
1124 Gardner, for 5 minutes.

1125 Mr. {Gardner.} Thank you, Mr. Chairman, and I thank the
1126 witnesses for their time and testimony today, and I
1127 appreciate the opportunity to learn from you.

1128 Mr. Rogers, thanks for being here. I am your neighbor
1129 to the north in Colorado, and this committee has spent a lot
1130 of time asking regulators questions about whether or not they
1131 will have an impact on the economy, whether or not they have
1132 taken into account jobs into their analysis, and last week we
1133 had a hearing with independent agencies, including FERC,
1134 where we asked, you know, whether or not they take into
1135 account their impact on the economy and jobs. And the answer
1136 was, oh, we certainly do, and then the follow up was, all
1137 right. Well, do you take into account the jobs that are
1138 impacting--the jobs that will be impacted when you implement

1139 a rule, and that rule then increases the cost of energy, do
1140 you take into account the jobs impacted by those who have had
1141 their energy bills go up or on those who have had their
1142 energy bills go up? And I think the answer was, no, they
1143 didn't take a look at that.

1144 And so we have had some good opportunities to really
1145 learn what is happening in this country when it comes to the
1146 economy.

1147 Your testimony talked about the impact that greenhouse
1148 gas regulations would have on farming and on agriculture.
1149 Your testimony goes into statements made before the Energy
1150 and Commerce Committee by Administrator Jackson when it comes
1151 to agriculture. We heard, I heard testimony from the
1152 Administrator over and over, she said that agriculture is
1153 exempt from greenhouse gas regulations.

1154 Do you believe that to be true?

1155 Mr. {Rogers.} Well, I haven't seen that specifically in
1156 law anywhere where EPA or Congress has exempted us from it,
1157 but I think as you narrow down the Title V requirements and
1158 you narrow down what happens when there is a lawsuit brought
1159 up and EPA is sued for not enforcing the rules and regs that
1160 they have and enforcing what Congress has passed over the
1161 years, and until they specifically come out with a change,
1162 you know, if you have got more than, you know, 50 head of

1163 cattle, depending on what they determine, you could be
1164 required to get this permit and--

1165 Mr. {Gardner.} So 50 head of cattle you could be
1166 required to have the permit. Can anybody survive with 50
1167 head of cattle? Can you make it--

1168 Mr. {Rogers.} No.

1169 Mr. {Gardner.} --as a rancher with 50 head of cattle?

1170 Mr. {Rogers.} No, not at all.

1171 Mr. {Gardner.} Can you make it as a family farm
1172 operation with 50 head of cattle?

1173 Mr. {Rogers.} No. It is difficult.

1174 Mr. {Gardner.} If cap and trade had passed, when Cap
1175 and Trade Bill passed last year, there was conversations that
1176 agriculture was exempt, if, even if agriculture, if a
1177 tractor, if a cow, if your farm had been directly exempted
1178 from that act, would the consequence of cap and trade still
1179 have affected and impacted that culture?

1180 Mr. {Rogers.} Certainly. It will be devastating on
1181 agriculture as well as all the business community. The
1182 things that we do, the fertilizers I use, the energy, the
1183 diesel fuel, all the inputs that I use in agriculture, the
1184 prices will skyrocket due to that, and those trickle-down
1185 effects will be devastating. We have no way to pass those
1186 costs onto our consumers at all.

1187 Mr. {Gardner.} Do we have any assurance from Lisa
1188 Jackson, Administrator Jackson, that agriculture will not be
1189 included in future greenhouse regulations? I believe the so-
1190 called exemption for agriculture expires in 2013. Do we know
1191 what happens beyond?

1192 Mr. {Rogers.} I do not know.

1193 Mr. {Gardner.} And so there is a large possibility that we
1194 could see these regulations applying directly to agriculture
1195 including what is referenced to in your testimony as a cow
1196 tax?

1197 Mr. {Rogers.} That is correct.

1198 Mr. {Gardner.} Thank you. Thank you for your time, and
1199 I yield back my time.

1200 Mr. {Shimkus.} The gentleman yields back his time.

1201 The chair now recognizes Mr. Whitfield for 5 minutes.

1202 Mr. {Whitfield.} I thank you, Mr. Chairman, and thank
1203 you for being with us today. This is such an interesting
1204 topic, and I think a vitally important area because as many
1205 of you pointed out in your testimony these regulatory bodies
1206 and particularly EPA and the Clean Air Act are issuing more
1207 and more and more regulations, and it is almost unprecedented
1208 of the way that they are moving over at EPA.

1209 And I was delighted that you brought up, Mr. Kovacs,
1210 this sue and settle because many of us feel like that is

1211 precisely what is happening, that the courts are making the
1212 decisions about environmental policy, and what makes it even
1213 worse is that we asked recently for EPA to provide us a list
1214 of all the organizations that they have been giving grants
1215 to, and they were making large sums, they have a large sum of
1216 money to give grants, and many of those grants are going to
1217 the environmental groups that then turn around and file the
1218 lawsuits and then as you say, they enter into a consent
1219 decree, and then they pay all the legal fees.

1220 And it is almost like an in-house job here, and it is
1221 not the way we need to do policy in the United States. And I
1222 think your point about this judgment fund definitely needs to
1223 be looked at because we need transparency there. We need to
1224 know how much money is being spent. We have asked EPA how
1225 many lawsuits do they have pending against them, and they
1226 haven't been totally direct, but the indications are there is
1227 somewhere between four and 500 lawsuits pending right now
1228 against the EPA.

1229 And as Chairman Shimkus said, we have reason to believe
1230 from discussions with a lot of different groups that EPA is
1231 actually out there encouraging these lawsuits, and I might
1232 just also add that on the TVA lawsuits, Sierra Club filed
1233 suit against TVA, and TVA, according to its President, was
1234 not even allowed to hire its own legal counsel to defend

1235 itself in that suit, but the solicitor general and EPA
1236 lawyers defended them, and they agreed in a consent decree to
1237 close down 18 coal-powered plants and pay the Sierra Club
1238 millions of dollars in not only legal fees but also
1239 contributions to them for--to use in whatever way they wanted
1240 to.

1241 So one--I get so worked up about it, and I need to be
1242 asking questions, but Mr. Liddell, I have been told that you
1243 are an expert on the Data Quality Act. We hear many people
1244 say, well, the Data Quality Act is a way that you can
1245 question the models being used and calculating costs and
1246 benefit analysis. Has your firm used the Data Quality Act?

1247 Mr. {Liddell.} We do not, and I don't know where you
1248 got that about me being an expert on that. I don't feel I
1249 am.

1250 Mr. {Whitfield.} Oh. Okay.

1251 Mr. {Liddell.} So--

1252 Mr. {Whitfield.} So but are you familiar with the Data
1253 Quality Act? Is--are any of you familiar?

1254 Mr. {Kovacs.} I am familiar with the Data Quality Act.
1255 That is probably, even though it was only a few sentences,
1256 one of the finest laws Congress ever passed.

1257 Mr. {Whitfield.} Right.

1258 Mr. {Kovacs.} It attempted to do something very simple,

1259 which is to require agencies to use the absolute best data
1260 that was useful, up to date, and transparent, and it allowed
1261 the public to actually correct the data if the agency found
1262 that it was wrong, and you passed it, I believe, in 2001. We
1263 litigated it for several years, and the courts made the
1264 decision that unlike the NEPA, for example, where they said
1265 anyone has a right to sue, a similar type of statute, the
1266 courts ruled that no one has a right to sue, and it is
1267 completely between OMB and the agencies as to how they want
1268 to require data to enter the system.

1269 And one of the things that I would suggest is there is
1270 an example where if there was a private right of action,
1271 where when I submit data to the agency, they have an
1272 obligation to review it, because let me tell you. When you--
1273 when we as a private party decide that we are going to submit
1274 data, it--first of all, it is very expensive. We have to go
1275 out and hire our own scientists, we have to do our own
1276 studies, we have to develop our own models. Then we have to
1277 submit it, and for the agency not even to review the data
1278 after it is submitted, and all we are asking them to do is
1279 correct it if it is wrong or tell us why you are right. And
1280 that is the whole purpose of the law, and that has been
1281 frustrated since 2003.

1282 Mr. {Whitfield.} Well, I mean, I think the system is

1283 broken, you know, whether you have a conservative
1284 Administration or a liberal Administration, there needs to be
1285 more balance in this process because you get the Office of
1286 Information and Regulatory Affairs that are reviewing these
1287 regulations over at OMB, and that is controlled by the
1288 Administration. The agencies are controlled by whoever is in
1289 charge of the government at that time, and that it appears
1290 that there definitely needs to be some independent source to
1291 have the ability to analyze what is going on in these
1292 agencies because no one--the models used, there is like a
1293 transparency there, and when you start calculating the value
1294 of a life and the way they determine economic value of a
1295 life, no one really understands it.

1296 So would you all agree that there needs to be some
1297 independent analysis of cost benefits that these agencies
1298 make in issuing these regulations?

1299 Mr. {Kovacs.} I certainly would.

1300 Mr. {Liddell.} Yes.

1301 Mr. {Rogers.} Yes.

1302 Ms. {Harned.} Yes.

1303 Mr. {Whitfield.} Well, Mr. Chairman, my time has run
1304 out, too, but I hope that we would have an opportunity to
1305 work with you and your organizations and try to develop some
1306 legislation to help address some of these shortcomings.

1307 Mr. {Shimkus.} Great. Thank you. I just want to for
1308 the record let--in that last question you posed that all the
1309 panelists agreed and said yes just for the record.

1310 The chair now recognizes the vice-chairman of the
1311 subcommittee, Mr. Murphy, for 5 minutes.

1312 Mr. {Murphy.} Thank you, Mr. Chairman. I would like to
1313 follow up on that very question, give all of you a chance to
1314 respond to that with regard to reviewing these regulations.
1315 We--when we just dealt with a bill that moved out of the full
1316 committee dealing with coal ash issues, it was simply to ask
1317 members of the President's Cabinet to comment on economic
1318 impact or job impact. I was amazed at the amount of dispute
1319 we had among our committee members about whether or not we
1320 should even required the Administration to make reference to
1321 jobs.

1322 So given you are from so many different organizations
1323 represented here, I wonder if you could comment more on this
1324 about having independent reviewers review some of these
1325 regulatory issues and guidelines and comment on what you
1326 think the benefits of that would be.

1327 Mr. Kovacs, do you want to start off with that?

1328 Mr. {Kovacs.} Sure. The--well, if there is any issue
1329 that is important to the institution of Congress it is
1330 getting at least some parity with agencies, which is

1331 something you don't have now, and in the present system the
1332 way it is structured is even on your regulatory laws like the
1333 unfunded mandates where they require this kind of an
1334 analysis, the way the law is structured is they could give
1335 you a half a page which says we did everything and everything
1336 is fine, and that is sufficient for court review. And that
1337 is the difficulty, but that is the law that you structured.

1338 But what--because so much of the economy with 170,000
1339 plus regulations belongs to the agencies, because they have
1340 this deference, and because the courts look at them as the
1341 experts, you really have no ability at this point in time to
1342 really check the agencies. And short of being able to pass a
1343 new law which regains this kind of authority, you are at a
1344 great disadvantage as an institution.

1345 Mr. {Murphy.} Mr. Liddell, could you comment on that?

1346 Mr. {Liddell.} Well, it is certainly a strong, good
1347 idea to have independent analysis and certainly be strong and
1348 supportive of that. I guess some of our frustrations is
1349 oftentimes when we do kind of like Mr. Kovacs said, we do
1350 provide information, well thought-out information,
1351 information that we have worked have to develop. It is still
1352 up to the agencies to kind of determine whether they are
1353 going to, you know, listen to it, think about it, you know,
1354 give it substantive value, and I am not quite sure that it is

1355 so much the issue of the quality of the data, it is the
1356 willingness of the organization, the agency to seriously
1357 consider the value and the ability to do so.

1358 You know, one of the things on job impact is, you know,
1359 there are multiple levels. First, will the agency consider
1360 job impact. That is important. That was sort of the
1361 question number one. And then there is another question is
1362 can they do that. When I think about as a business person
1363 all the things we do, all the incentives that are created by
1364 regulations to reduce jobs, I am not sure that anybody is
1365 able to really consider all the unintended consequences and
1366 the impacts on jobs. So that is an issue, and I am not sure
1367 independent analysis would do that. I think some kind of
1368 real-world pragmatic experience might do that.

1369 Mr. {Murphy.} Let me make sure I understand this. So
1370 when it comes to analyzing impact on jobs, perhaps those
1371 doing the analysis should be people who have created jobs?

1372 Mr. {Liddell.} Yes. Oddly enough I think--

1373 Mr. {Murphy.} Well--

1374 Mr. {Liddell.} --people who have sat in the seat of not
1375 just creating--

1376 Mr. {Murphy.} Like if you have a problem with your
1377 health, go to a doctor as opposed to just--okay. Thank you.

1378 Ms. Harned.

1379 Ms. {Harned.} Yes. No. I think that this is a very
1380 interesting idea, and really what we see after Congress gets,
1381 you know, these procedural protections in place that are
1382 really meant to get small business impact, which is obviously
1383 our best, our most important thing to brief amendments and
1384 the Regulatory Flexibility Act, you start seeing, and we
1385 definitely see this with all the agencies, a check-the-box
1386 mentality, like, you know, we go through, and we have done
1387 that small business impact analysis, and they know how to do
1388 it just enough to meet their obligation. And I think more
1389 oversight that Congress can give to ensure that that process
1390 was really done completely, in particular when you are
1391 looking at things like did the agency really consider less
1392 burdensome alternatives and seriously consider those
1393 alternatives and what that could mean for getting the job
1394 done from a policy perspective, from their perspective, but
1395 not hurt, you know, job creators and the economy and leave
1396 everybody in the wake.

1397 So I think that those kinds of issues really do need
1398 more Congressional oversight, and that, again, is, I think
1399 that particular reform on the less burdensome alternatives is
1400 in H.R. 527, which Mr. Liddell indicated just was marked up
1401 and passed.

1402 Mr. {Rogers.} We could support the independent review.

1403 We are always looking for ways to reform regulations, and I
1404 will bring it back to PM10 and the dust issue. All that is
1405 done a lot on modeling and if they don't have the research on
1406 coarse particulate matters, they will make it up because that
1407 is what the modeling requires. They have to plug in a
1408 coefficient somewhere so that they can put a number in to
1409 decide how to regulate it. So we are all for doing more
1410 research and making sure that the models they use are
1411 correct, because they have to have them to plug them in to
1412 determine whether or not we are at attainment or non-
1413 attainment.

1414 Mr. {Murphy.} I appreciate that, and Mr. Chairman, you
1415 know, as you know, this town is often so poisoned by things,
1416 and it is not a matter that sometimes people look at what a
1417 document says but who says it that sometimes people decide
1418 before they even read it if it is of value, and it is
1419 oftentimes looked upon not what a regulation does for jobs
1420 but what it does for votes.

1421 I tend to think that is an insult to job makers and
1422 workers, too, but thank you very much. I appreciate it.

1423 Mr. {Shimkus.} I thank my friend. I do plan based upon
1424 time maybe to do a second round just to ask additional
1425 questions, but before we do that I would like to recognize
1426 Mr. Butterfield for 5 minutes.

1427 Mr. {Butterfield.} Thank you very much, Mr. Chairman,
1428 and thank the witnesses for coming forward today with their
1429 testimony.

1430 I am sensitive to the topic that we are talking about
1431 today. I represent, as most of my colleagues know, a largely
1432 rural district that depends very heavily on agriculture, and
1433 we depend also on manufacturing. It is important to me that
1434 my constituents continue to have the opportunity to produce
1435 goods and put bread on the table, and sometimes that means
1436 examining the flexibility and the timing and the efficacy of
1437 particular rules.

1438 Having said that, I am deeply concerned that this
1439 committee is turning into the no regulation committee. We
1440 have spent a majority of our hearings and markups not
1441 developing new plans in energy and telecom and healthcare but
1442 instead breaking out the eraser for any and all Obama
1443 Administration proposed rules.

1444 While I support review of these rules, at least some of
1445 them, and after careful consideration of impacts during these
1446 trying economic times, these hearings begin to smack of
1447 political rebel rising.

1448 Let me start with Mr. Rogers, and thank you, Mr. Rogers,
1449 for your testimony. I have a few questions for you. You
1450 state in your testimony that 37,000 agriculture facilities

1451 will be covered by the greenhouse gas rule and will be forced
1452 to spend over \$20,000 on permits. I hope I am restating your
1453 testimony. This rule has been in effect since January. How
1454 many facilities have gone, have had to get a permit thus far,
1455 if you know?

1456 Mr. {Rogers.} These are the permits here? I don't have
1457 that number right this minute, sir.

1458 Mr. {Butterfield.} Based on our research it would be
1459 absolutely none. Why have these facilities not had to
1460 purchase permits? Do you know that?

1461 Mr. {Rogers.} I believe that EPA is still determining
1462 what the magic number is. I don't think the final rule is
1463 out on what is going to be required. They are working with
1464 one of the new committees they just put together, EPA and
1465 Agriculture and Rural Committee, to help decipher what is
1466 appropriate and what is not appropriate.

1467 Mr. {Butterfield.} Well, under the tailoring rule can
1468 you tell me when any of these facilities will be subject to a
1469 Title V or NSR permit?

1470 Mr. {Rogers.} No, I can't. It will depend on when EPA
1471 determines that that regulation will be enforced.

1472 Mr. {Butterfield.} Projected costs are always a
1473 complicated subject for rules and regulations. Often the
1474 estimates vary widely from those produced by advocacy

1475 organizations, EPA, and industry groups.

1476 However, I would note a study from 2010, by Resources
1477 for the Future, which I ask unanimous consent to be added to
1478 the record, where the researchers found that EPA and other
1479 agencies routinely overestimate potential costs. In fact, of
1480 the 17 rules studied 14 were found to have costs less,
1481 sometimes considerably less than their estimates.

1482 [The information follows:]

1483 ***** COMMITTEE INSERT *****

|
1484 Mr. {Butterfield.} Mr. Kovacs, and I hope I am
1485 pronouncing that correctly, could it be possible that these
1486 rules help drive innovation quicker than a baseline scenario,
1487 thus lowering costs below the projected amounts?

1488 Mr. {Kovacs.} Well, Congressman, there is more than
1489 sufficient controversy over the cost estimate analysis and
1490 the kind of assumptions you use because you can make it come
1491 out depending on the assumptions any way you want. I can
1492 only tell you how, you know, when we do a study how we do it
1493 and how we do our audits and how we do peer review.

1494 But when you get into a study like that, one of the
1495 things that is the most important is what are the assumptions
1496 that they have used. Do they assume that EPA will implement
1497 it? Do they assume they won't? Do they assume innovation?
1498 Do they assume it won't? And I think on that each regulation
1499 is different, and one of the things if the agency seriously
1500 wanted to address this issue, that right up front in the
1501 Unfunded Mandates Act, for example, they have to do some kind
1502 of an analysis of what are the anticipated costs and benefits
1503 and impact on the society so that as part of the rule we can
1504 begin that discussion. That generally does not happen.

1505 So I think there is a lot of room in that area for solid
1506 discussion among everyone.

1507 Mr. {Butterfield.} This was certainly the case with the
1508 Acid Rain Program. Is there any other reason as to why it
1509 might be lower than you could think of?

1510 Mr. {Kovacs.} Well, acid rain had a lot of things going
1511 on simultaneously. I mean, my recollection is that at the
1512 same time you did acid rain, you had the Staggers Act, the
1513 distinguished chairman of this committee, which deregulated
1514 the railroads, and you began to move low sulfur coal from the
1515 west to the east. So you had a few factors, and I think if
1516 you look at the history books and the ledger and articles
1517 there is a great debate as to whether it was regulation or
1518 low sulfur coal and the deregulation of the railroads.

1519 Mr. {Butterfield.} Thank you. We are right on target.
1520 Thank you, Mr. Chairman.

1521 Mr. {Shimkus.} And I thank you and I hope my colleagues
1522 don't mind since you here I would like to go to a second
1523 round, and I just want to follow up on that because that is
1524 so true on the acid rain and the '92, Clean Air Act is that
1525 there was two issues, fuel switching and technology, and that
1526 is the problem we have with the greenhouse gas issue is we
1527 don't have the technology. You know, we are--so for in
1528 Illinois where we have high sulfur coal, that is where I know
1529 you have never seen that poster of mine with those miners,
1530 but they lost their jobs because they fuel switched. That is

1531 really the debate. They moved low sulfur coal from Montana,
1532 and the power plant is still there. The mine across the
1533 street was closed, so that is a little bit--I would agree
1534 with you on that analysis.

1535 I just want to go to Mr. Liddell and Mr. Rogers because
1536 they are the actual producers, actually job. When you decide
1537 to make a decision, either, one, to expand a manufacturing
1538 facility or to buy 500 more acres, don't you do a cost
1539 benefit analysis?

1540 Mr. {Liddell.} Absolutely. You have to.

1541 Mr. {Shimkus.} Mr. Rogers?

1542 Mr. {Rogers.} Without a doubt.

1543 Mr. {Shimkus.} And why do you do that? Why do you do
1544 that, Mr. Liddell? Why do you do that?

1545 Mr. {Liddell.} Well, it seems obvious you don't want to
1546 spend more than you are going to get in return from an
1547 investment, and it is critical that you measure all the
1548 costs, all the assumptions, all the risks, and end up with a
1549 high level of confidence that you are going to be better off
1550 for having made that investment than not or else you are not
1551 going to go forward.

1552 Mr. {Shimkus.} All right. Mr. Rogers?

1553 Mr. {Rogers.} And we have to look at commodity prices,
1554 do I have enough labor, do I have enough equipment, what is

1555 going to mean to my banker if I increase the size of my farm,
1556 can I borrow the extra funds for the cost of production of
1557 that 500 acres? In order to grow 500 acres of cotton, you
1558 know, it costs \$1,000 an acre so there is an extra half
1559 million dollars right off the top.

1560 Mr. {Shimkus.} Our point is is that this is nothing
1561 abnormal in the business sector, and that is our point. The
1562 subcommittee has been renamed Environment and the Economy,
1563 and the reason why is we want to continue to grow on economy,
1564 and we are checking upon, and we are trying to do that
1565 balance between environmental regs that are needed, I have
1566 stated the Clean Air Act has been very beneficial, but there
1567 is an affect on the economy, and that is why your testimony
1568 is so great today.

1569 Ms. Harned, I think it was your opening statement you
1570 mentioned Barrow-Shimkus letter on NAAQS. Who did that? Mr.
1571 Liddell? Explain that one more time. I think this is very
1572 important. This gives you an example how environmental
1573 agencies intervene, distort the ability of business to plan
1574 because--what is going on in this situation?

1575 Mr. {Liddell.} Well, this is the ozone--

1576 Mr. {Shimkus.} Yeah.

1577 Mr. {Liddell.} --review that EPA has taken on.

1578 Mr. {Shimkus.} And when were they supposed to--when are

1579 they supposed to--

1580 Mr. {Liddell.} It is a 5-year process.

1581 Mr. {Shimkus.} Five-year process. And where are we at
1582 in that 5 years?

1583 Mr. {Liddell.} Well, 2013, would be the normal time for
1584 the review.

1585 Mr. {Shimkus.} So the review is due in 2013, but the
1586 agency is doing it now.

1587 Mr. {Liddell.} Correct.

1588 Mr. {Shimkus.} Why?

1589 Mr. {Liddell.} Well, I think they have a mission. They
1590 want to see the standards tightened.

1591 Mr. {Shimkus.} And what is that effect on jobs in the
1592 economy?

1593 Mr. {Liddell.} Well, we have a pretty good measure on
1594 that from a study, and, again, you know, subject to some give
1595 and take. We are looking at, I think it is 7.3 million jobs,
1596 as many as 7.3 million jobs and about \$1 trillion in new
1597 regulatory costs annually between 2020 and 2030.

1598 Mr. {Shimkus.} So, I mean, that is Exhibit A of
1599 numerous exhibits of, I mean, you aren't asking not to do
1600 this.

1601 Mr. {Liddell.} No.

1602 Mr. {Shimkus.} They should do it by their rules and

1603 regs 2 years from now, but they are moving it forward. Is
1604 this they don't have anything else to do?

1605 Mr. {Liddell.} Well, and as if they don't seem to
1606 understand what is going on in the economy right now. I
1607 mean, if you are ever going to have an impact on jobs, now is
1608 not the time to have a negative impact on jobs.

1609 Mr. {Shimkus.} Yeah, and I have taken a lot of notes,
1610 of course, I am all over the place. I do really appreciate
1611 your testimony. It has given us some issues. I would also
1612 encourage you all specific rifle shots of things that we can
1613 do. We are very interested in doing that, trying to, again,
1614 protect public health but also bring some certainty in these
1615 uncertain times to keep the economy where it is at and
1616 actually start growing again.

1617 And while I have my last 18 seconds left, fortunately we
1618 are going to a second round of questions because in the back
1619 is the people responsible for me being either good or bad if
1620 anyone was looking at me as a member of Congress, my mom and
1621 dad. So I want to recognize them as they walk in. So they
1622 are here for the baseball game, so with that is there anyone
1623 else seeking time to--the chair recognizes Mr. Green for 5
1624 minutes.

1625 Mr. {Green.} Mr. Chairman, I want to recognize your
1626 parents. Your son and I played basketball together when we

1627 were much younger in Congress, so now we just spar verbally
1628 instead of bumping into each other on the court.

1629 I get lots of e-mails and requests from my constituents
1630 on a program that would be a federal mandate, and I was
1631 wondering if any of your agencies or associations have taken
1632 a stand on it.

1633 The E-Verify Program was created trying to deal with
1634 federal contractors so we would know at least on the federal
1635 level if someone was on a contract that was paid for by the
1636 Federal Government that we would make sure that their Social
1637 Security numbers are correct.

1638 And I am just getting a number of e-mails requesting we
1639 expand that. I have some concern because I think we have
1640 done studies, the GAO or someone, that said, you know,
1641 sometimes, you know, my name is Gene Green. I have always
1642 been known by that, but the IRS knows me by Raymond Eugene
1643 Green, and that is my Social Security number, that if we
1644 applied that E-Verify, what would it do to a farming
1645 operation or a restaurant or anybody who is a member of any
1646 of your associations?

1647 Mr. {Rogers.} Mr. Green, it is something I have had to
1648 deal with in Arizona for the last couple of years is
1649 mandatory E-Verify, and I will tell you that it is in my
1650 opinion as a leader of agricultural organization, it is not

1651 ready for primetime. It is not ready to go nationwide. It
1652 doesn't specifically -- I can run your name and your Social
1653 Security number through the process, and it says, yes, you
1654 are good to work, but it could be somebody else that has your
1655 information.

1656 And so that puts me at risk in a couple of lawsuits
1657 because if I do hire you and come to find out that it is
1658 wrong, then I am in trouble, but if I don't hire you, then I
1659 am in trouble as well, and so we understand technology is
1660 coming and needs to be there. Organizationally we don't
1661 think it is good in this economy to put business under more
1662 regulations and more scrutiny and turn this program into a
1663 program that determines whether I hire you or not.

1664 In agriculture we are concerned about labor. We have
1665 been on the Hill for a number of years asking for temporary
1666 worker programs. We have to have workers to harvest our
1667 crops, and so we are concerned that if E-Verify comes down
1668 the path without some kind of temporary worker program or
1669 reform in some way, agriculture will be devastated.

1670 Mr. {Green.} And that was imposed by the State, not by
1671 the Federal Government.

1672 Mr. {Rogers.} Correct. That is correct. So we have had
1673 the experience with it where the State imposed that law
1674 mandating it, and it is practically impossible to hire

1675 somebody.

1676 Mr. {Shimkus.} Would the gentleman yield on that same
1677 point?

1678 Mr. {Green.} Sure.

1679 Mr. {Shimkus.} If laws were passed to indemnify the
1680 employer, would that help? In other words, if you have done
1681 everything right and then you are not held liable to
1682 litigation.

1683 Mr. {Rogers.} That would certainly be a step in the
1684 right direction. Our problem is there is not enough people
1685 who want to come work and bale hay at 3:00 in the morning,
1686 milk cows all night, and cut lettuce every day.

1687 Mr. {Shimkus.} With 9.2 percent unemployment?

1688 Mr. {Rogers.} That is exactly correct.

1689 Mr. {Green.} Let me ask the other associations because
1690 I only have 2 minutes left and did your association take a
1691 stand on the potential for federal legislation on E-Verify?

1692 Mr. {Liddell.} Could I comment as a business person?
1693 We are very familiar with E-Verify. We hire people all over
1694 the country, and we are hiring and rehiring and laying off.
1695 We got transient employees, transient workforce.

1696 The problem with us and E-Verify is that kind of the
1697 intended consequences. The rules haven't thought through the
1698 fact that you are going to hire somebody, put them on the job

1699 site today, and there is time that it take for them to--that
1700 they can't go to work. There is extra burden, extra costs
1701 associated with it, so it is more the mechanics of E-Verify
1702 than the theory or the concept of E-Verify that is our
1703 problem.

1704 Mr. {Green.} Has the Chamber of Commerce made a
1705 determination?

1706 Mr. {Kovacs.} Well, I would be very thrilled to have
1707 our labor division send you a response for the record.

1708 Mr. {Green.} Okay. Appreciate it.

1709 Ms. {Harned.} Right, and I am going--we will have to
1710 get back to you on that as well.

1711 Mr. {Green.} Okay. Appreciate it. That was just an
1712 example, in this case it is a State-imposed regulation, and I
1713 know some States are doing that, and it can cause problems in
1714 just producing a product. So--

1715 Mr. {Rogers.} Well, and we are using the federal
1716 program. I mean, Arizona didn't develop a new program. We
1717 are mandated to use E-Verify, and it is not very workable
1718 right now.

1719 Mr. {Green.} Okay. Thank you, Mr. Chairman.

1720 Mr. {Shimkus.} Great questions. Thank you. The chair
1721 recognizes my friend from Kentucky, Mr. Whitfield.

1722 Mr. {Whitfield.} Thank you very much, and Mr. Kovacs,

1723 would you mind getting back to us on this Data Quality Act on
1724 ways that it could be improved, because I don't have an in-
1725 depth understanding of it, but it is my understanding that
1726 you really cannot utilize that until the rule has become
1727 final. And then at that point as Ms. Harned said, once a
1728 rule becomes final, from a practical standpoint, there is not
1729 a lot can be done. So if you wouldn't mind--

1730 Mr. {Kovacs.} I would be glad to.

1731 Mr. {Whitfield.} --we would really appreciate that.

1732 Mr. {Kovacs.} Just one quick point on that. The way
1733 the law is structured is you should be able to use it not
1734 only in--as part of the rule-making process but literally at
1735 any other place in the agency process where they are doing
1736 studies whether they be economic or scientific so that you
1737 can go in and actually input into the study so that the
1738 agency gets it right at the end. It is supposed to begin in
1739 the beginning, not at the--

1740 Mr. {Whitfield.} But you have to file a lawsuit.

1741 Right?

1742 Mr. {Kovacs.} You can file what they call a petition
1743 for correction. It is just that the agencies really aren't
1744 addressing them at all, and the courts have said that we
1745 don't have a right to sue.

1746 Mr. {Whitfield.} Right. Okay. On this National

1747 Ambient Air Quality Standard you all have already pointed out
1748 that EPA is moving in advance of when they are really
1749 required to. Do any of you have any information right now
1750 about what percent of the population live in non-attainment
1751 areas right now?

1752 Mr. {Rogers.} I just know in Arizona that it is
1753 Maricopa County, which is the urban area. You know, in
1754 Arizona we only have 15 counties compared to some of your
1755 States that have, you know, hundreds of counties.

1756 Mr. {Whitfield.} Right.

1757 Mr. {Rogers.} So it is a monster country, but--and it
1758 tends to be more of an urban issue. The issue we have is
1759 those of us that farm in that area get sucked into the
1760 regulation, get sucked into the clean up, and we have agreed
1761 we all need to step up and do our fair share to--

1762 Mr. {Whitfield.} But you are in non-attainment now?

1763 Mr. {Rogers.} That is correct. We are in non-
1764 attainment now at 150, and if the proposal goes through and
1765 they change it to either 65, 75, or 85, all of our data shows
1766 the entire State will become non-attainment.

1767 Mr. {Whitfield.} Yeah, and I think a big portion of the
1768 whole country will be in non-attainment, and then that is
1769 going to--as you say, Mr. Liddell, it is going to have a real
1770 negative impact on job creation because everybody is going to

1771 be limited in development in their area.

1772 In other comment I would make on how aggressive EPA is
1773 being, Congress on two or three separate occasions explicitly
1774 said no to greenhouse gas regulation under the Clean Air Act.
1775 One was in 1990, when the Clean Air Act was last amended.
1776 There actually was a vote at that time on an amendment about
1777 greenhouse gas, and that was rejected, and then the U.S.
1778 Senate rejected almost unanimously the Kyoto Protocol and
1779 then there was another vote in the House on it. But because
1780 of that tailoring rule, you know, they expanded that now, and
1781 of course, there are lawsuits pending on that as well.

1782 But I for one think that--I know that the Clean Air Act
1783 is almost sacro-sane but the last time we looked at it in any
1784 depth was 1990, and I genuinely believe it should be reviewed
1785 because a lot of things have happened since 1990, and so I
1786 would hope that at some point down the road that we might get
1787 into reviewing the Clean Air Act in its entirety.

1788 And I yield back the balance of my time.

1789 Mr. {Shimkus.} The gentleman yields back his time.

1790 The chair recognizes the gentleman from Pennsylvania,
1791 Mr. Murphy, for 5 minutes.

1792 Mr. {Murphy.} Thank you. Just a couple of quick items
1793 here.

1794 I want to ask about another area, and that is guidance

1795 documents. We talked about regulations, but those have some
1796 enforcement, but guidance documents as you know are just
1797 something that various agencies says we think you ought to do
1798 this, but it is no force on that.

1799 Can you describe some impact that some of those might
1800 have upon some job and economic development? Whoever wants
1801 to comment on those things. Whoever wants to anything on
1802 that. Mr. Kovacs?

1803 Mr. {Kovacs.} I mean, if you go strictly by the way the
1804 courts have applied it, that if it has no impact on the
1805 rights of a citizen, it is truly guidance. The difficulty
1806 that we have is if you have 170,000 regulations, you probably
1807 have 400,000 documents or 400,000 guidance documents, and
1808 many of the documents can be used as part of an inspection so
1809 that even though it is only guidance, the question is do you
1810 have to comply, and if you don't comply, the difficulty you
1811 have is you have to really defend that in court.

1812 So the guidance puts parameters around it, and
1813 theoretically it doesn't have any impact, but in most of the
1814 major, in most of the regulations or most of the legislation
1815 it addresses it. It goes after guidance and as well as when
1816 John Graham was Administrator of OIRA, as part of how he
1817 administered, he did put out guidance on guidance and how it
1818 had to be truly non--it had to be truly not impacting rights,

1819 and that seems to be the distinction. If it impacts a right,
1820 it certainly is a regulation and should go through the
1821 process. If it impacts no rights, then it really shouldn't
1822 matter, and you should be able to disregard it.

1823 Unfortunately, in an inspection, for example, you really
1824 get put in the position of defending yourself.

1825 Ms. {Harned.} Right.

1826 Mr. {Murphy.} I am not sure I am understanding what you
1827 are saying. Be with you in a second. So that is--so if
1828 someone is inspecting a factory, a pharmaceutical company, or
1829 something, and they have these guidance, and they will ask
1830 have you done the following things, and if the owner of that
1831 plant says, no, then they say, then you have to do them or
1832 else they are brought to court. They defend--they win the
1833 case if it is just guidance, but they still have to defend
1834 their position.

1835 Mr. {Kovacs.} That would be the case. Yes.

1836 Mr. {Murphy.} Okay.

1837 Mr. {Kovacs.} That--

1838 Ms. {Harned.} And I have actually seen that when I used
1839 to practice law in defending a small business owner at an
1840 administrative hearing level. We saw, truthfully an
1841 inspector overused the guidance against the small business
1842 owner, pulling out one of the factors that was in a guidance

1843 as something that he shouldn't have done, and he did, and so
1844 I have seen that as a practical matter.

1845 I would also say just more generally, though, small
1846 business owners really work hard to keep up with the
1847 regulations that are on the books, so there is a great
1848 concern in the small business community that when you have
1849 got a guidance material on top that that they need to know
1850 about and that is, you know, not really readily apparent to
1851 them. As Mr. Kovacs said, it really is an enforcement area
1852 that we see the biggest problems with that and small business
1853 owners often don't even know they exist.

1854 Mr. {Murphy.} Thank you. Anyone else want to comment
1855 on that issue? Yes, Mr.--

1856 Mr. {Liddell.} I would make one experience, a risk
1857 experience that comes to mind. I think, you know, we are as
1858 business people kind of--we are not looking to fight. We are
1859 looking to comply with the rules. So, you know, guidance
1860 documents to us are the Bible. I mean, we follow those, and
1861 I can remember one specific thing, you know, our board of
1862 directors was talking about, you know, which course of action
1863 should we take, there was a guidance document there, we
1864 followed it, you know, and so they almost have at least on
1865 companies like ours, the impact of a regulation or of law.

1866 Mr. {Murphy.} Thank you. I would like to point out

1867 three final things, Mr. Chairman. One is I certainly
1868 encourage all members of this and other committees in
1869 Congress to spend some time touring offices and factories and
1870 farms and in the midst of that tour instead of just photo
1871 ops, asking to see what those guidance documents and
1872 regulations are and how they go along with it. It is a
1873 worthwhile thing to do, and it will open the eyes.

1874 The second thing I would like to point out in relation
1875 to the other question asked, what about regulations, back in
1876 the Herbert Hoover Administration, June, 1930, when Congress
1877 passed the Smoot-Hawley Act that imposed 59 percent tariffs
1878 on things, at that time the American Economic Association, I
1879 think it was, sent a thousand some petitions to veto the act,
1880 and they didn't, and we know what that did, when they did not
1881 listen to the independent people.

1882 And third, I just--so it is unanimous consent, I would
1883 like to ask to have the--this powerful Subcommittee on the
1884 Environmental declare this Mr. and Mrs. Shimkus day.

1885 Thank you very much.

1886 Mr. {Shimkus.} If I could just reclaim the 15 second
1887 remaining and ask this question, should federal agency
1888 guidance documents be subject to proposal and comment period
1889 like regulations? What do you think?

1890 Mr. {Kovacs.} Certainly if they have an impact. If the

1891 agency is anticipating that even as a part of an inspection
1892 they have to be complied with, they should be subject to
1893 regulatory proceedings.

1894 Mr. {Shimkus.} Mr. Liddell? You don't care.

1895 Mr. {Liddell.} Well, we do treat them as--

1896 Mr. {Shimkus.} No. I--

1897 Mr. {Liddell.} So I would say, yeah, they should go
1898 through the process to the extent the process is a good one.

1899 Mr. {Shimkus.} Ms. Harned.

1900 Ms. {Harned.} We would support that.

1901 Mr. {Shimkus.} Mr. Rogers.

1902 Mr. {Rogers.} I would agree.

1903 Mr. {Shimkus.} Great. Thank you. I really appreciate
1904 your time this morning, and we will take your comments and
1905 put them through the mix and see what if we can do with this
1906 committee or maybe other committees of jurisdiction.

1907 Appreciate my colleagues for their attendance. Appreciate my
1908 mom and dad for being in the audience, and with that I will
1909 adjourn this hearing.

1910 [Whereupon, at 10:48 a.m., the subcommittee was
1911 adjourned.]