

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

SMALL BUSINESS COUNCIL
THOMAS M. SULLIVAN, EXECUTIVE DIRECTOR



March 29, 2017

The Honorable John Shimkus
Chairman
Subcommittee on Environment
United States House of Representatives
Washington, DC 20515

Re: Questions for the Record, Hearing Entitled, “Modernizing Environmental Laws: Challenges and Opportunities for Expanding Infrastructure and Promoting Development and Manufacturing.”

Chairman Shimkus:

On behalf of the Small Business Council of the U.S. Chamber of Commerce, I am responding to your questions that arose from your hearing on February 16th, 2017. Thank you for allowing the U.S. Chamber of Commerce to appear before your Subcommittee and I hope you find this information responsive.

Responses to Representative Gregg Harper:

Question on whether the U.S. Chamber of Commerce has assessed the cost of regulation on small business:

Yes, the U.S. Chamber of Commerce Foundation recently issued a report entitled, “The Regulatory Impact on Small Business.” The study shows how federal regulations cost the American economy as much as \$1.9 trillion a year in direct costs, lost productivity and higher prices. The impact on small businesses is nearly 20 percent higher than the average regulatory burden shouldered by the Business community as a whole. The Chamber Foundation’s full report can be found online at: <https://www.uschamberfoundation.org/smallbizregs>.

Question on the impact of regulatory delays in the permitting of new energy or other major infrastructure projects:

My colleague, William Kovacs, who is the Chamber’s Senior Vice President for Environment, Technology, and Regulatory Affairs, presented testimony to your Subcommittee on July 14, 2011 at a hearing entitled, “Regulating Chaos: Finding Legislative Solutions to Benefit Jobs and the Economy.” Mr. Kovacs’s testimony detailed an examination of the lost economic value of 351 projects that were

stopped, stalled or killed outright due to regulatory and permitting delays. The economic study is part of the “Project No Project” initiative that can be found online at: <http://www.projectnoproject.com>. Researchers Steve Pociask of TeleNomic Research, LLC and Joseph P. Fuhr, Jr. of Widener University found that successful construction of the identified projects could produce a \$1.1 trillion short-term boost to the economy and create 1.9 million jobs annually. According to The Associated General Contractors of America, only 1 percent of the construction industry has businesses larger than 100 employees, so the impact of regulatory delays in the construction business is felt almost entirely by small businesses.

The U.S. Chamber of Commerce supported permit streamlining provisions that were enacted as part of the FAST Act because of the economic harm caused by delay.¹ We would like to work with Congress to ensure those permit streamlining sections of the FAST Act are effective.

Responses to Representative Richard Hudson:

Question on whether the Federal government has been transparent about the costs and benefits it calculates for environmental rules:

The Federal government has not been transparent about the costs and benefits it calculates for environmental rules. Susan Dudley, the former Administrator for the Office of Information and Regulatory Affairs (OIRA), explained the lack of transparency in how the Federal government currently assesses costs and benefits in a recent publication by Cato.² I share the views of Ms. Dudley and have testified numerous times before Congress on the need for the Federal government to better assess the impacts of regulation on small businesses in a transparent manner.³

1. Fixing America’s Surface Transportation (FAST) Act, Pub. L. No. 114-94, 129 Stat. 1312 (2015)

² Susan E. Dudley, *OMB’s Reported Benefits of Regulation: Too Good to be True?*, Regulation Magazine, Cato Institute (Summer 2013), available at: <https://object.cato.org/sites/cato.org/files/serials/files/regulation/2013/6/regulation-v36n2-4.pdf>.

³ See recommendations for indirect impact analysis in testimony by Thomas Sullivan:

- U.S. House of Representatives, Committee on Small Business, *The RFA at 25: Needed Improvements for Small Business Regulatory Relief*, Serial No. 109-5 (March 16, 2005).
- U.S. House of Representatives, Committee on Small Business, *Improving the Regulatory Flexibility Act – H.R. 2345*, Serial No. 108-62 (May 5, 2005).
- U.S. House of Representatives, Committee on Small Business, *Legislation to Improve the Regulatory Flexibility Act*, Serial No. 110-62 (December 6, 2007).
- U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Courts, Commercial and Administrative Law, *Regulatory Flexibility Improvements Act of 2011; Unleashing Small Businesses to Create Jobs*, Serial No. 112-16 (February 10, 2011).

Question on whether environmental regulations should take costs into account in more than a perfunctory way:

There is an imbalance in how the Federal government assesses costs and benefits with regard to small businesses and how they are impacted by federal regulations. While the U.S. Environmental Protection Agency (EPA) emphasizes its view that its regulations benefit human health (an assessment of the secondary impact of how pollution reductions benefit human health), the EPA does not adequately assess the secondary (or indirect) costs for the same regulations. For instance, when EPA issues mandates on fuel content, it does not adequately assess how the rise in gas prices impact the transportation sector, an industry dominated by small firms. The Regulatory Flexibility Act should be amended to ensure that regulatory impacts on small businesses are disclosed by EPA in a balanced and transparent manner.⁴

Responses to Representative Bill Johnson:

Question on whether EPA's existing guidance on outreach to small businesses should be updated:

The 92-page guidance issued by the EPA in November of 2006 is certainly comprehensive.⁵ Unfortunately, the guidance seems to be missing a key ingredient for EPA to engage constructively with small businesses and that is a cooperative relationship with the Office of Advocacy at the U.S. Small Business Administration (SBA). SBA's Office of Advocacy is charged with implementing the Regulatory Flexibility Act and its positive relationship with the small business community should be relied upon as a resource for Federal agencies, including EPA, to constructively engage with the small business community.⁶ EPA's guidance should be updated by instructing its staff to coordinate with SBA's Office of Advocacy as early as possible when EPA is formulating how a regulation may impact small businesses.

Chapter 4 of EPA's November 2006 guidance covers small business outreach. In this section, EPA does encourage cooperation with SBA's Office of Advocacy. However, the guidance should be updated to instruct EPA staff that such cooperation take place as early as possible in the regulatory development process.

⁴ *Id.*

⁵ Alexander Cristofaro, *Final Guidance for EPA rulewriters: Regulatory Flexibility Act as amended by the Small Business Regulatory Flexibility Act*, Office of Policy Economics, and Innovations, U.S. Environmental Protection Agency (EPA) (November 30, 2006), available at: <https://www.epa.gov/sites/production/files/2015-06/documents/guidance-regflexact.pdf>.

⁶ Regulatory Flexibility Act, Public Law No. 96-354, 5 U.S.C. 601 (September 19, 1980), amended by the Small Business Regulatory Enforcement Fairness Act, Public Law. No. 104-121 (March 29, 1996), amended by Public Law No. 110-28 (May 25, 2007), available at: <https://www.sba.gov/advocacy/small-business-regulatory-enforcement-fairness-act-sbrefa>.

EPA should be complimented for including references to the value of trade and membership associations that represent small businesses in the technical aspects of rulemaking. EPA benefits from engagement with trade and membership organizations that represent small businesses and are relied-upon for technical advice. When EPA updates its guidance, the constructive and cooperative relationship between EPA and trade and membership organizations should be highlighted as a key element in small business outreach.

Questions about when EPA “got-it-right” when listening to and addressing small business concerns when issuing new regulations under the Clean Air Act and when EPA didn’t “hit-the-mark:”

EPA Got it Right: When EPA truly listens to small businesses and changes its approach to regulation, the agency can reduce pollution and minimize economic harm to small businesses. In the summer of 2002, EPA notified SBA’s Office of Advocacy that it would seek to reduce emissions from diesel powered non-road engines. With help from SBA’s Office of Advocacy, EPA met with several small business stakeholders who raised concerns about the technical and cost feasibility of EPA’s contemplated rule. EPA made changes that allowed for a phase-in of new technology and an exemption for engines with less than 25 horsepower. EPA’s flexibility helped small engine manufacturers afford technology upgrades and still resulted in considerable pollution reductions.

EPA Missed the Mark: My colleague, Keith Holman, who is a Senior Policy Counsel for Environment, Technology, and Regulatory Affairs at the U.S. Chamber of Commerce, presented testimony before the Congress a few years ago and provided several examples of where EPA missed the mark.⁷ The most egregious examples of EPA ignoring small business concerns is when the agency refuses to convene a panel of small businesses because EPA “certifies” that its rule will not have a significant economic impact on a substantial number of small entities.⁸ In 2008 and 2009, numerous small business stakeholders and SBA’s Office of Advocacy petitioned EPA to formally consult with small businesses on its proposed greenhouse gas endangerment finding, but EPA refused.

EPA also misses the mark when it ignores the recommendations from the Small Business Advocacy Review Panel convened under the Small Business Regulatory Enforcement Fairness Act (SBREFA).⁹ As outlined by Keith Holman before the House Small Business Committee, the regulatory alternatives proposed by small

⁷ Keith W. Holman, *Regulatory Flexibility Act: Is EPA Failing Small Businesses?*, U.S. House of Representatives, Committee on Small Business (June 27, 2012).

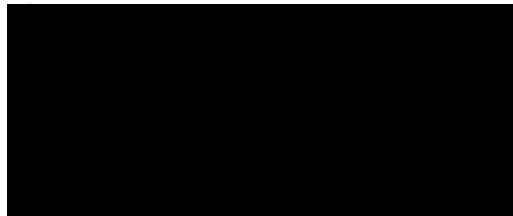
⁸ See explanation of SBREFA “certification” at: <https://www.epa.gov/laws-regulations/summary-regulatory-flexibility-act-amended-small-business-regulatory-enforcement>.

⁹ See explanation of Small Business Advocacy Review Panels under SBREFA at: <https://www.epa.gov/reg-flex/small-business-advocacy-review-sbar-panels>.

business stakeholders in the Boiler MACT rulemaking would have minimized costs without compromising EPA's environmental objective.¹⁰ However, EPA refused to include the recommended small business flexibilities.¹¹

Thank you again for the opportunity to present the views of the Chamber's Small Business Council. Please do not hesitate to contact me for any additional information about the views expressed in this letter.

Sincerely,



Thomas M. Sullivan
Executive Director
Small Business Council

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment

¹⁰ See, Holman (June 27, 2012).

¹¹ Winslow Sargeant, Ph.D., *Letter to EPA Administrator, Lisa P. Jackson, Comments on EPA's Proposed Rules, "National Emission Standards for Hazardous Air Pollutants for Major and Area Sources: Industrial, Commercial, and Institutional Boilers* (August 23, 2010).