



**Statement of Hal Quinn
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Before the
House Committee on Oversight and Government Reform
Reducing Regulatory Burdens Task Force
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Regulations are a double edged sword. Focused and efficient regulatory frameworks can produce tangible benefits for the public and business. However, poorly designed, inefficient, duplicative and antiquated rules serve no useful purpose. They divert capital from more productive use, impair economic and job growth, impose barriers to innovation and impede sustained improvement in performance. The burden of federal regulations as of 2012 exceeded \$2 trillion, or 12 percent of the GDP.¹ Across all businesses, federal regulations cost companies almost \$10,000 per employee. The burden falls disproportionately upon smaller businesses with a 17 percent greater cost per employee than the average firm.²

According to an analysis prepared by NERA Economic Consulting, the growth in the cost of major regulation has far exceeded economic growth. The cumulative inflation-adjusted cost of compliance with major regulations affecting the manufacturing sector grew at an annualized rate more than three times (7.6%) than GDP growth (2.2%) from 1998 through the end of 2011.³ Regulatory burdens also produce lower economy-wide labor compensation and loss of households' purchasing power.

Despite a series of executive orders and directives requiring federal agencies to review their existing regulations and proceed with repealing outdated and inefficient ones, agencies lack any incentive or compulsion to do so.⁴ And the results of those retrospective reviews clearly reflect the absence of accountability for failing to comply

¹ M. Crain and N. Crain, *The Cost of Federal Regulations to the U.S. Economy, Manufacturing and Small Business* (Sept. 10, 2014).

² Id.

³ NERA Economic Consulting, *Macroeconomic Impacts of Federal Regulation of the Manufacturing Sector* (Aug. 21, 2012) (commissioned by Manufacturers Alliance for Productivity and Innovation).

⁴ See, e.g., Executive Order 13610, *Identifying and Reducing Regulatory Burdens* (May 10, 2012).

with these executive directives. On balance, the product of these exercises comprise clarifications of agency powers, revised justifications for extant or new rules and plans to deploy new information technology (e.g., electronic reporting) to reduce the paperwork burdens on the agencies. Consequently, while businesses must continue to abide by outdated and excessive regulations or face the risk of incurring government sanctions, there is no reciprocity with federal agencies that are free to either ignore or adhere superficially to these executive orders.

Similarly, executive orders on improving the regulatory system⁵ embody sound principles for balanced regulatory policy by directing agencies to ensure regulations are necessary and justified, pursue the least burdensome alternative, promote certainty, use best available science and weigh the cost and benefits (including cumulative effects) of proposed regulations. However, these directives are not obligatory and, as a consequence, easily evaded by: regulatory accounting techniques that diminish the actual costs and double count benefits; selective reliance on available science and technical literature; infrequent consideration of non-regulatory solutions; failure to consider overlapping requirements under other laws; and, an aversion to evaluating the cumulative effects of the burdens imposed under a program or upon an industry.

There may not be any single solution for correcting unbalanced regulatory policy or excess. However, codifying into law the basic principles found in these executive orders for improving regulation and conducting retrospective reviews would introduce some accountability to the regulatory process. For retrospective reviews, we commend as a model Canada's recently codified "One-for-One" rule which requires an agency to off-set the burdens of any new or amended regulation by the removal of an existing regulation with a burden of equal amount in cost.⁶

We provide several examples of regulations and policies that reflect how our current regulatory system can impose costs which greatly exceed any tangible benefits, duplicate other federal or state regulations or lack any compelling purpose and need.

A. Unbalanced Regulations: Cost Greatly Exceed Benefits

1. EPA Utility MATS Rulemaking (77 Fed. Reg. 9304, Feb. 16, 2012): EPA's final rule for new and existing coal and oil-fired electric generating units establishing National Emissions Standards for Hazardous Air Pollutant for mercury, trace metal and acid gases took effect on April 17, 2015. The MATS regulation—the

⁵ See, e.g., Executive Order 13563, *Improving Regulation and Regulatory Review* (Jan. 18, 2011).

⁶ Legislating the One-for-One Rule (<http://www.tbs-sct.gc.ca/hgw-cgf/priorities-priorites/rtrap-parfa/0129bg-fi-eng.asp>).

most expensive in EPA history—is a poster child for unbalanced regulations that dismiss the real costs and inflate the benefits to convince the public that the enormous expense is justified. Even by EPA’s own calculation the rule will cost American consumers almost \$10 *billion* each year, but bring, at most, only \$4-\$6 *million* in benefits. To make matters worse, more than half of the costs are attributable to imposing standards for emissions the agency found pose *no danger* to public health. EPA’s position is that while it was allowed to consider costs in choosing whether to regulate, it also retained the discretion to ignore them. And ignore them it did, with a rule that demands consumers pay \$1,600 in exchange for \$1 in benefits.

EPA’s unbalanced approach to regulation is also evident in its reckless disregard for the impacts its decision would have on the reliability and cost of the nation’s electricity supply. EPA predicted that the rule would force the closure of 4,400 megawatts of base load generation capacity. Experts warned EPA that the rule would likely force the retirement of ten times that amount of capacity. The Energy Information Administration concludes that as much as 60,000 megawatts of base load power generation capacity will close due to the rule. EPA blithely and wrongly attributes these closures to “market forces.” An analysis by Duke University Nicholas School of the Environment concludes that most of the power plant retirements are due to EPA’s rule, not fuel prices or other market forces. Pratson et al., *Fuel Prices, Emission Standard, and Generation Costs for Coal vs Natural Gas Power Plants*, Environ. Sci. Technol. (March 2013). EPA never engaged the Federal Energy Regulatory Commission or the North American Electric Reliability Corporation—the nation’s designated electric reliability organization—in seeking expert analysis and opinion on the impacts of the rule on the reliability and affordability of the nation’s electricity supply.

The direct job impacts of the rule have proven devastating for coal miners, power plant workers and other Americans formerly employed in the coal supply chain. More than 40,000 coal miners have lost their high-wage jobs since EPA issued the rule. With at least four additional jobs created for every coal mine job, another 160,000 Americans have been separated from their jobs. According to Department of Energy studies and models, coal base load power creates and sustains more permanent jobs (3 to 9 times more) than other sources of electricity generation.

2. Greenhouse Gas (GHG) Emission Standards for Electric Power Plants: EPA’s companion power plant rules: (1) prohibit the construction of new High Efficiency Low Emission coal fired power plants; and (2) mandate that states reduce carbon dioxide emissions from existing power plants by an average of 32 percent nationally. These regulations represent a symbolic yet costly gesture where the costs are real but the benefits are not. Both regulations, like the MATS rule, by design will make the nation’s electric grid less diverse, less

reliable and more expensive. EPA concedes that it cannot quantify any changes in climate as a result of its targets for reduction in carbon dioxide emissions from power plants. However, they contend the costs are justified in order to show global leadership. Where that leadership takes us can be seen in other developed economies in the European Union where the toll of rocketing energy costs are driving out top manufacturing firms or creating “fuel poverty” with a growing number of households unable to afford the most basic level of energy for adequate heating, lighting or use of appliances.

GHG Standards for New Power Plants (80 Fed. Reg. 64,510, Oct. 23, 2015): EPA’s rule conditions the construction of new coal fueled power plant on the use of technology—carbon capture and storage—that has not been demonstrated at scale at coal fueled base load electricity generation facilities. EPA relies upon one plant under construction—with several years of cost overruns and delays—two plants still lingering on the drawing board and several abandoned demonstration projects. All of these demonstrate nothing in terms of performance and commercial availability of CCS. EPA also dismissed the option of setting the standard based upon new higher efficiency coal technology that would produce electricity with emissions 20-35 percent below the current averages for the existing coal power plant fleet. On the other hand, the agency adopted a standard for other fossil fuel power plants—natural gas combined cycle (NGCC)—that over 90 percent of the existing NGCC plants already meet. In short, EPA issued a standard that no existing coal based power plant can meet, but chooses the status quo for NGCC. EPA’s rule is designed to reduce the diversity of the nation’s electric power supply. With coal supplying more than 45 percent of the nation’s electricity over the past decade, this diversity saves consumers more than \$93 billion annually and reduces the volatility of their power bills by half. IHS Energy, *The Value of U.S. Power Supply Diversity* (July 2014).

GHG Standards for Existing Power Plants (80 Fed. Reg. 64,662, Oct. 23, 2015): EPA’s so-called Clean Power Plan is an attempt to reorganize the nation’s electric grid state by state. According to electricity generators, the grid managers and the nation’s electric reliability organization, EPA’s plan will be difficult, if not impossible, to implement without further degrading grid reliability and increasing the price of electricity. Several utilities and grid managers forecasted cascading outages and voltage collapse on their systems. The Southwest Power Pool concluded that compliance will require, at a minimum, the imposition of a \$45/ton carbon tax on electricity generation in the eight states in which it operates the grid. Two studies examining the implementation options offered by EPA estimate the plan will cost \$366-\$412 billion. Forty-six states will face double digit increases in wholesale electricity prices with 30 states incurring increases in excess of 20 percent. In short there are no low cost options for meeting EPA’s Costly Power Plan. EPA advances this risky and costly plan in the name of climate change while unable to quantify any climate benefits.

B. Duplicative and Conflicting Regulations and Policies

1. Proposed Financial Assurance Requirements for Metals and Minerals Mining (74 Fed. Reg. 37,213, July 28, 2009): EPA selected the hardrock mining industry as the agency's first target for the development of financial responsibility requirements under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA affords EPA discretion whether to impose financial responsibility requirements on industrial sectors. EPA's choice of mining is odd in that regulations will duplicate and preempt financial responsibility requirements already imposed on the metals and minerals mining industry by the Bureau of Land Management and U.S. Forest Service on public lands and by the states on private lands. For years, those federal land management agencies communicated that they did not see a risk sufficient to justify EPA actions that would duplicate and perhaps conflict with agencies that have primary responsibility for regulating the operation, maintenance and closure of mining operations. Last week, the Western Governors' Association again communicated similar concerns to EPA. Modern metals and minerals mines are designed, constructed and operated to minimize risks to the environment and companies already post hundreds of millions of dollars in financial assurance instruments under these programs to cover a range of costs associated with the reclamation and closure of their facilities.
2. Mining Permits for Operations on Federal Lands: Few countries can rival our nation's abundance of mineral resources but even fewer have a permitting system as duplicative and inefficient as the United States, where it can take more than 10 years for an operation to be permitted. These delays routinely occur on projects requiring mine permits from federal land management agencies or other federal agencies that administer federal programs applicable to mining operations. Delays significantly impact our domestic mining industry's ability to compete for mineral exploration and development investments. According to the 2014 Ranking of Countries for Mining Investment analysis by expert mining consulting firm, Behre Dolbear, permitting delays are the most significant risk to mining projects in the United States. Unexpected delays in the permitting process alone reduce a typical mining project's value by more than one-third.⁷ These delays discourage investment and jeopardize the growth of downstream industries, related jobs and technological innovation that all depend on a secure and reliable mineral supply chain. A recent survey of C-suite manufacturing executives found that more than 90 percent of manufacturers are concerned about access to minerals. Further, 95 percent of executives surveyed are worried that the lag in the permitting process for new minerals mines has a serious impact on U.S. competitiveness.

⁷ SNL Metals & Mining, Permitting, *Economic Value and Mining in the United States* (June 2015).

There are administrative solutions that federal agencies can and should implement, including: (1) early coordination with all involved agencies (federal and state) and stakeholders; (2) establishing and adhering to timeframes for reaching decisions; and (3) avoiding duplication of analysis and review by relying upon other agencies, especially state agencies, whose analysis and review includes similar or identical regulatory requirements. Many of these best practices are within the agencies' authority and are encouraged by the Council of Environmental Quality's National Environmental Policy Act (NEPA) regulations and guidelines. However, agencies continue to eschew using them. A more permanent and effective solution is for Congress to provide direction for federal agencies to do so. The *National Strategic and Critical Minerals Production Act* (H.R. 1937), passed by the House of Representatives on Oct. 22, 2015, carefully addresses the inefficiencies of our underperforming permitting system, without compromising our rigorous environmental standards, by incorporating best practices for improving coordination among state and federal agencies, clarifying responsibilities, avoiding duplication, setting timeframes and bringing badly needed accountability to the process.

C. Lacking a Compelling Need or Purpose

1. Office of Surface Mining Proposed Stream Protection Rule (80 Fed. Reg. 44,436, July 27, 2015): The Office of Surface Mining Reclamation and Enforcement (OSM) proposed a sweeping regulatory rewrite of the existing regulatory program for coal mines under the Surface Mining Control and Reclamation Act (SMCRA). This proposal would change the nature and scope of OSM's regulatory activity by imposing significant new requirements that go well beyond OSM's authority under SMCRA. The states that possess exclusive regulatory jurisdiction over coal mining have repeatedly indicated they see no need for the rule. OSM's own oversight reports disclose exemplary performance by states and mining companies in limiting and eliminating off-site impacts from surface coal mining operations. Indeed, according to OSM's own reports, most mines are free of any off-site impacts. Many of the proposed requirements duplicate and overlap existing requirements of the Clean Water Act and other laws giving rise to regulatory uncertainty, conflicts, permitting delays and increased costs for both industry and states with no benefit.

The agency has embarked upon a broad-ranging search to justify its activities spending \$9.5 million over five years—a clear indication that the rulemaking lacks any identified need or purpose. Indeed, in responding to comments from states and others about the need for a rulemaking, OSM responded that “*we had already decided to change the rule following change of Administrations on January 20, 2009.*”⁸ OSM's internal analysis of a draft rule under consideration

⁸ 75 Fed. Reg. 34,667 (June 18, 2010).

indicated that it would cause more than 7,000 coal miners to lose their jobs. An independent analysis concluded that the rule could cost 55,000-79,000 jobs throughout the United States. Recordings of meetings between OSM and its contractor suggest OSM pressured the contractor to change assumptions to produce lower employment impacts. When the contractor objected that such a change would not reflect “the real world,” an OSM representative replied: *“It’s not the real world, this is rulemaking.”*⁹

2. Mine Safety & Health Administration Respirable Coal Mine Dust (79 Fed. Reg. 24,813 May 1, 2014): The Department of Labor, Mine Safety and Health Administration (MSHA), issued a rule requiring all coal operations to: (1) reduce the permissible exposure limit to coal dust to which miners can be exposed; (2) substantially alter the process for collecting samples upon which compliance determinations are made; and (3) purchase (from a single supplier) patented sampling devices for compliance purposes that remain unreliable and produce inaccurate results.

MSHA contends the rule is designed to reduce the incidence of coal workers pneumoconiosis (CWP) by reducing the exposure of miners to respirable coal dust. However, since 1980, average coal dust exposures and the incidence of CWP have declined under the existing standards. The rule is premised on the discovery of cases of “rapidly progressing CWP” in a three state region located in Central Appalachia. The data does not demonstrate a causal connection between the current coal dust exposure levels and incidence of disease. Rather, MSHA data, and independent analysis, both identify an increase in silica exposure due to mine-seam conditions as the cause of the rise in CWP cases in this small region. Instead of focusing upon the real problem, MSHA is leveraging a localized problem that needs to be addressed—silicosis, not CWP—as justification to impose a costly and disruptive regulation on the coal industry nationwide.

As it stands, the current rule is a lost opportunity to provide better protection for those who actually need it in the clustered geographical area with the isolated cases of increased CWP. At the same time, the rule threatens the viability of mines and the jobs of many coal miners as they incur the unnecessary and out-sized costs of a one-size-fits-all approach. The rule ignores scientific evidence, and equally important, rejects proven solutions such as personal protection technologies and rotation of miners that are used in other industries to effectively address dust exposure.

⁹ See Committee on Natural Resources, Majority Staff Report, 112th Cong. at 4. (http://naturalresources.house.gov/uploadedfiles/staffreport-112-osm_sbzr.pdf).