



Statement of the U.S. Chamber of Commerce

**Modernizing Environmental Laws: Challenges and
Opportunities for Expanding Infrastructure and
Promoting Development and Manufacturing
U.S. Chamber of Commerce**

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The Chamber's mission is to advance human progress through an economic, political, and social system based on individual freedom, incentive, initiative, opportunity, and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Good morning Chairman Shimkus and Ranking Member Tonko, Members of the Subcommittee. My name is Tom Sullivan and I run the Small Business Council at the U.S. Chamber of Commerce. The Chamber is the world's largest business federation. We represent the interests of over 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The majority of our business members are small firms. In fact, approximately 96 percent of Chamber member companies have fewer than 100 employees and 75 percent have fewer than ten. Maxine Turner, who is the founder of Cuisine Unlimited in Salt Lake City, Chairs our Small Business Council, which works to ensure the views of small business are considered as part of the Chamber's policy-making process.

I am especially pleased to join our partners at the Pennsylvania Chamber of Business and Industry on this panel. Kevin Sunday and his colleagues are on the front line of advocating on behalf of job creation and growth in their state. They are best in class and we are honored to work alongside them on this issue, as well as a number of others. The U.S. Chamber was founded by a group of chambers of commerce in 1912. They are the backbone of our institution and that's as true today as it was 105 years ago.

I have spent most of my professional career advocating for small business. First, at the National Federation of Independent Business (NFIB), and then more recently at a law firm where I represented coalitions of small businesses and service providers. From 2002-2008, I was honored to serve as the Chief Counsel for Advocacy at the U.S. Small Business Administration (SBA). That office is charged with independently representing the views of small business before Congress and the Administration and oversees agency compliance with the Regulatory Flexibility Act.¹ It is the purpose of the Regulatory Flexibility Act that guides my testimony to the Subcommittee this morning – that early input by small businesses in the development of regulatory policy should serve as a model for modernizing environmental statutes as well as the government's role implementing the law.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires federal agencies to satisfy certain requirements when they plan new regulations, including (1) identifying the small entities that will be affected, (2) analyzing and understanding the economic impacts that will be imposed on those entities, and (3) considering alternative ways to achieve the agency's regulatory goal while reducing the economic burden on those

¹ *Regulatory Flexibility Act*, Pub. L. No. 96-354, 94 Stat. 1164 (1980), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857 (1996) (codified as amended at 5 U.S.C. Sec. 601-612), also amended by Sec. 1100 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 2112 (July 21, 2010).

entities.² The Regulatory Flexibility Act was amended in 1996 by the Small Business Regulatory Enforcement Fairness Act (SBREFA).³ SBREFA requires the Occupational Safety and Health Administration (OSHA), U.S. Environmental Protection Agency (EPA), and the Consumer Financial Protection Bureau (CFPB) to convene small business review panels (I refer to the panels as “SBREFA panels”) whenever their planned rules are likely to have a significant economic impact on a substantial number of small entities. SBREFA panels include representatives from SBA’s Office of Advocacy, the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA) and the agency proposing the rule. The panel prepares a report containing constructive recommendations for the agency planning the rule and that report is made publicly available prior to the public providing comment on the agency’s proposed rule.

There are three basic reasons for the Regulatory Flexibility Act.

- (1) One-size-fits-all federal mandates do not work when applied to small business;
- (2) Regulations disproportionately harm small businesses; and
- (3) Small businesses are critically important to the American economy.

Prevention of one-size-fits-all federal mandates

Many times federal laws and regulations that may work for large corporations simply do not work for small firms. Several years ago, I worked with a group of small businesses in Quincy, Illinois, who found themselves in the cross hairs of Superfund. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (referred to here as, “Superfund”) was designed to fund cleanups of the nation’s most polluted sites.⁴ Rather than wait years and years to figure out what caused the pollution and who polluted, the Superfund law allowed the EPA to get funding from one or two of the largest companies that were responsible. The law then allowed those companies to seek reimbursement, through lawsuits, from other companies and individuals who may have contributed to the polluted site. While the liability scheme did expedite payment to the government and cleanup, it did not anticipate how small businesses could get caught up in a liability web with almost no choice but to pay significant fees, even if their only fault was responsibly sending household garbage, food scraps, and benign waste to their landfill. The authors of Superfund never intended to target small business owners like Greg Shierling who owned two McDonald’s and Mac Bennett who owned a furniture store in the Quincy area, or Barbara Williams who owned a diner in Gettysburg, Pennsylvania. The unintended consequences of a one-size-fits-all statute forced small business owners to spend thousands in legal fees or

² Keith W. Holman, the Regulatory Flexibility Act at 25: Is the Law Achieving Its Goal?, 33 Fordham Urban Law Journal 1119 (2006).

³ *Small Business Regulatory Enforcement Fairness Act of 1996*, Pub. L. No. 104-121, 110 Stat. 857 (1996).

⁴ *Compressive Environmental Response, Compensation, and Liability Act of 1980*, Pub. L. No. 96-510, 94 Stat. 2767 (1980).

settlements when they really had not done anything wrong. Thankfully, Congress took action and exempted innocent small businesses from Superfund in 2001. Whether it is reauthorizing a new law, creating a new agency⁵, or when agencies craft new regulations, government is well advised to solicit input and work with small businesses to devise solutions that maximize the law's or regulation's benefits and minimize harmful economic impact.

Small firms are disproportionately impacted by federal regulation

Research published in 2010 by Nicole Crain and W. Mark Crain of Lafayette College represents the latest of four government studies on the impact of federal regulations on small business.⁶ The total cost of complying with federal regulations was estimated above \$1.75 trillion. Four years later, Professors Crain and Crain updated their research for the National Association of Manufacturers and estimated the burden at \$2.028 trillion, an amount that equaled 12 % of GDP.⁷

The latest Crain study found that small businesses shoulder costs that are 2 ½ times more per employee than their larger business competitors. Firms with fewer than 50 employees paid \$34,671 per employee per year and firms with 100 or more employees paid \$13,750 per employee to comply with federal regulations. The cost difference is most severe when the study examined environmental regulations, where firms with fewer than 50 employees paid more than 3 times the amount per employee than those with 100 or more employees.⁸

Importance of small business to the U.S. economy and the threat of over-regulation

Recent figures show there are over 28 million small businesses in the United States.⁹ The 62 million people employed at small firms represent about half of America's private sector workforce and small business is responsible for creating about 2/3 of

⁵ Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act created the Consumer Financial Protection Bureau (CFPB). Section 1100G requires small business input in CFPB rulemaking. *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub. L. No. 111-203 (July 2010).

⁶ Nicole V. Crain and W. Mark Crain, *The Impact of Regulatory Costs on Small Firms*, written for the Office of Advocacy, U.S. Small Business Administration (September 2010), available at: [https://www.sba.gov/sites/default/files/The%20Impact%20of%20Regulatory%20Costs%20on%20Small%20Firms%20\(Full\).pdf](https://www.sba.gov/sites/default/files/The%20Impact%20of%20Regulatory%20Costs%20on%20Small%20Firms%20(Full).pdf)

⁷ W. Mark Crain and Nicole V. Crain, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing and Small Business*, A Report for the National Association of Manufacturers (September 2014), available at: <http://www.nam.org/Data-and-Reports/Cost-of-Federal-Regulations/Federal-Regulation-Full-Study.pdf>

⁸ *Id.*

⁹ Office of Advocacy, U.S. Small Business Administration, *Frequently Asked Questions* (June 2016), available at: https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf

the net new jobs over the past 15 years.¹⁰ However, the United States has experienced a decline in start-ups over the past decade and that trend threatens a full economic recovery.¹¹ According to data from the U.S. Census Bureau, there were 700,000 fewer net businesses created from 2005 to 2014 than from 1985 to 1994. More worrisome is recent evidence that suggests the number of transformational startups, those that contribute disproportionately to job and productivity growth, has been in decline since 2000.¹²

At the same time start-ups are struggling, regulation is a growing concern for small businesses. A quadrennial survey of 20,000 small business owners in August found that “unreasonable government regulations” is the second-most pressing concern, up from 5th in the last survey taken in 2012. Regulation’s placement as the second-most serious issue for small business is the issue’s highest ranking in the 34-year history of the survey.¹³ Last month, the National Small Business Association (NSBA) released its survey and found that more than half of small business owners held off hiring a new employee due to regulatory burdens.¹⁴

The decline in entrepreneurship and small businesses’ increasing concern with regulatory burden are trends that should be reversed in order for the United States to experience growth.

Small Business Input Can Work

When agencies and small businesses work together and constructively find solutions, better regulation happens. There are numerous examples of win/win solutions to real environmental challenges. One of my favorite examples of cooperation between small businesses and the EPA occurred shortly after I was confirmed by the Senate as Chief Counsel for Advocacy at the SBA. EPA wanted to reduce pollution from nonroad diesel engines (mostly diesel tractors). Prior to issuing a proposed rule, EPA convened a SBREFA panel and I recall one meeting we hosted between small engine manufacturers from Michigan and EPA engineers. EPA walked us through their plans that basically would have mandated a pollution-reduction device (it looked like a big muffler) attached to the engine. A small

¹⁰ *Id.*

¹¹ Ryan Decker, John Haltiwanger, Ron Jarmin and Javier Miranda, *The Secular Decline in Business Dynamism in the U.S.*, Working Paper, 2014, available at: http://econweb.umd.edu/~haltiwan/DHJM_6_2_2014.pdf.

¹² Ryan A. Decker, John Haltiwanger, Ron S. Jarmin, and Javier Miranda, *Where Has all the Skewness Gone? The Decline in High-Growth (Young) Firms in the U.S.*, (NBER Working Paper No. 21776 (December 2015)), as described in the National Bureau of Economic Research Digest On-Line (February 2016), available at: <http://www.nber.org/digest/feb16/w21776.html>.

¹³ Holly Wade, *Small Business Problems and Priorities*, NFIB Research Foundation (August 2016), available at: <http://www.nfib.com/assets/NFIB-Problems-and-Priorities-2016.pdf>.

¹⁴ *2017 NSBA Small Business Regulations Survey*, National Small Business Association (January 18, 2017), available at: <http://www.nsba.biz/wp-content/uploads/2017/01/Regulatory-Survey-2017.pdf>.

business owner, at the meeting, pointed out that the John Deere engine hood would not fit over the device and the small businessman feared that John Deere would simply source the manufacturing overseas instead of waiting for EPA to revise its regulations. Because of that conversation, EPA re-thought their approach. EPA's decision probably saved the sector, and the revised rules still reduced pollution from diesel tractors by close to 90 percent.

Exercise Oversight to Ensure Fair Enforcement

While the bulk of my testimony focuses on policy development through legislation and regulation, I also want to strongly advise the Subcommittee to exercise its oversight to ensure EPA fairly enforces its regulations once they are finalized and small businesses are able to understand their responsibilities. Several years ago, I helped the National Association of the Remodeling Industry (NARI) partner with EPA to bolster the agency's enforcement efforts against non-certified remodelers who were putting families, and especially young children, at risk of lead poisoning by unsafe work practices when remodeling homes built before 1978. NARI worked hard to make sure its remodeler members became EPA lead paint certified and the remodelers became frustrated with the number of non-certified crews who were underpricing work and creating dangerous situations. Dave Merrick of Merrick Design and Build in Maryland and Bruce Case of Case Design/Remodeling in Virginia helped lead an effort to bolster EPA's crackdown on non-certified remodelers. The frustration remodelers like Dave and Bruce felt is a good example of why small business input is critical at the legislative stage, the regulatory development stage, and the implementation stage.

Conclusion

Congress is on the right track, looking at ways to modernize the regulatory process. The Regulatory Accountability Act (H.R. 5) has already passed the U.S. House of Representatives along with the Small Business Regulatory Flexibility Improvements Act of 2017 (H.R. 33). Together, these reforms that passed with bipartisan support will help ensure that agencies rely on credible science and data, bring greater transparency to the rulemaking process, and bolster the involvement of the small business community in regulatory policymaking.

America needs the economic strength, job-creating power, and innovative genius¹⁵ of small business in order to get back on track economically. These bills, along with improvements to existing media-specific statutes, will help calm the regulatory headwinds that prevent small business from being the economic engine of growth here in the United States.

¹⁵ Research by the U.S. Small Business Administration revealed that small firms produce 16 times the number of patents per employee than large patenting firms. Anthony Breitzman and Diana Hicks, *An Analysis of Small Business Patents by Industry and Firm Size*, written for the Office of Advocacy, U.S. Small Business Administration, Contract No. SBAHQ-07-Q-0010 (November 2008), available at: <https://works.bepress.com/anthony-breitzman/15/>.