



Statement of the U.S. Chamber of Commerce

**ON: Hearing on EPA Regulatory Overreach:
Impacts on American Competitiveness**

**TO: U.S. House of Representatives
Committee on Science, Space and Technology**

DATE: June 4, 2015

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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.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

**BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE ON SCIENCE, SPACE
& TECHNOLOGY**

Hearing on EPA Regulatory Overreach: Impacts on American Competitiveness

**Testimony of William L. Kovacs
Senior Vice President, Environment, Technology & Regulatory Affairs
U.S. Chamber of Commerce**

June 4, 2015

Good morning, Chairman Smith, Ranking Member Johnson, and distinguished Members of the Committee. My name is William L. Kovacs and I am senior vice president for Environment, Technology and Regulatory Affairs at the U.S. Chamber of Commerce. I am pleased to appear before you to discuss the U.S. Chamber's views on "EPA Regulatory Overreach: Impacts on American Competitiveness". This is an appropriate topic in light of the three high-impact regulations that either have been issued or will be issued within a very short time-frame.

On May 27, 2015, the U.S. Environmental Protection Agency (EPA) finalized a regulation that greatly expands the definition of "waters of the United States" (WOTUS) under the Clean Water Act. The increase in federal regulatory authority under the waters rule likely will impact land uses, undermine and complicate state and local programs, and delay or halt projects across the country.

In August, the EPA is planning to issue final regulations for greenhouse gas (GHG) emissions from new and existing power plants in the U.S. The proposed GHG rule for new power plants may very well require a technology that has yet to be proven commercially viable on a large-scale facility in the U.S., and in all likelihood will discourage the construction of any new coal-fired power plants in the U.S. The Clean Power Plan – the proposed GHG rule for existing power plants – would give the federal agency unprecedented powers over the types of energy sources used by states and could adversely impact grid reliability and the affordability of electricity in this country.

Later this year – certainly by the *court-ordered* deadline of October 1st – the EPA will finalize its proposal to revise the ozone National Ambient Air Quality Standard (NAAQS). The agency’s proposal to lower the ozone NAAQS from 75 parts per billion (ppb) to a range of 65 to 70 ppb could put much of the country in “nonattainment” or noncompliance with the standard. A nonattainment designation can make it very difficult for areas to attract new business and grow existing businesses, which translates into a loss of jobs as well as an inability to grow our economy and compete globally.

All of this means that within a period of less than six months, it is almost certain that the EPA will have issued three high-impact and very costly regulations that likely will push the boundaries of federal authority further than they have ever been extended. The result could be significantly adverse impacts on the country’s economy, the ability to create jobs in the U.S., and the ability of states to implement these new standards.

With all of this regulatory activity in a very short period of time, the immediate question that comes to mind is – *how did we get here?* How did we get to the point at which a single federal agency of unelected officials is regulating not only environmental protections, but land use, economic development, and the country’s energy portfolio? The short answer is: the regulatory process is broken and it has proven difficult for Congress to fix.

Regulatory dysfunction started to occur decades ago when there were no environmental laws. Congress had little knowledge of how to proceed so it delegated massive amounts of power to EPA. The problem was later compounded by courts granting deference to agency decisions instead of acting as a check on regulatory powers. Possessing broad regulatory power, EPA aggressively implemented environmental laws but refused to implement federal regulatory laws designed to guide agencies in the development of their rules.

On top of broad congressional delegation of legislative authority and court deference, there is the fact that EPA misses most of the statutory deadlines imposed by Congress while tasking the states with implementing most of these federal environmental programs. All of this combines to allow EPA to impose many mandates on business and state and local governments without having the responsibility to implement or fully pay for an almost impossible task. Imagine being a state environmental official currently tasked with administering thousands of federal environmental regulations and now being mandated, with no additional resources, to almost simultaneously implement the WOTUS rule, the Clean Power Plan and a new Ozone standard.

As discussed in more detail below, the EPA could be following and employing existing laws and executive orders, which would improve considerably the rulemaking process. Those laws and orders include the following:

- Continuous evaluations of the employment impacts of EPA regulations, i.e. 321(a) of the Clean Air Act;
- Information Quality Act;
- Unfunded Mandates Reform Act;
- Regulatory Flexibility Act;

- Use of the Clean Air Science Advisory Committee;
- Executive Order 12,866 on inconsistent or incompatible regulations; and
- Executive Order 13,563 on cumulative impacts of regulations.

Unfortunately, these regulatory mandates have been generally ineffective because Congress failed to provide the public with a mechanism to ensure enforcement. If Congress is to maintain “checks and balances” on the power of agencies and continue our system of federalism, then the regulatory process must be reformed and laws, such as the ones identified above, must be enforced.

I. EPA REGULARLY MISSES ITS STATUTORY DEADLINES

Under several of the major environmental laws, such as the Clean Air Act and the Clean Water Act, the EPA is required to promulgate regulations or review existing standards by statutorily-imposed deadlines. Without a doubt, the EPA more often than not misses those deadlines. For example, according to a 2014 *Harvard Journal of Law & Public Policy* article, “[i]n 1991, the EPA met only 14% of the hundreds of congressional deadlines” imposed upon it.¹

Another study by the Competitive Enterprise Institute examined the EPA’s timeliness in promulgating regulations or reviewing standards under three programs administered through the Clean Air Act: the National Ambient Air Quality Standards, the National Emissions Standards for Hazardous Air Pollutants, and the New Source Performance Standards.² The CEI study concluded that since 1993, “98 percent of EPA regulations (196 out of 200) pursuant to these programs were promulgated late, by an average of 2,072 days after their respective statutorily defined deadlines.”³ When the EPA misses these deadlines, it is its subsequent actions that can cause the real harm.

a. Citizen Suits and Sue and Settle Agreements

Once a deadline is missed, outside groups, using the “citizen suit” provisions in twenty environmental statutes,⁴ will sue the agency for failure to promulgate the subject regulation or to

¹ Henry N. Butler and Nathaniel J. Harris, *Sue, Settle, and Shut Out the States: Destroying Environmental Benefits of Cooperative Federalism*, HARVARD JOURNAL OF LAW & PUBLIC POLICY, Vol. 37, No. 2 at 599 (2014) (available at http://www.harvard-jlpp.com/wp-content/uploads/2014/05/37_2_579_Butler-Harris.pdf) (citing Richard J. Lazarus, *The Tragedy of Distrust in the Implementation of Federal Environmental Law* 54 LAW & CONTEMP. PROBS. 311, 323 (1991) (available at <http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1158&context=facpub>). According to Lazarus, “the 14% compliance rate refers to all environmental statutory deadlines, 86% of which apply to EPA.” *Id.* at 324 (citing *Statutory Deadlines In Environmental Legislation: Necessary But Need Improvement* 13-14 (ENVIR. & ENERGY STUDY INST. AND ENVIR. L. INST., 1985)).

² William Yeatman, *EPA’s Woeful Deadline Performance Raises Questions about Agency Competence, Climate Change Regulations, “Sue and Settle”* (July 10, 2013) (available at <https://cei.org/web-memo/epas-woeful-deadline-performance-raises-questions-about-agency-competence-climate-change-re>).

³ *Id.*

⁴ Act to Prevent Pollution from Ships 33 USC § 1910; Clean Air Act 42 USC § 7604; Clean Water Act 33 USC § 1365; Superfund Act 42 USC § 9659; Deepwater Port Act 33 USC § 1515; Deep Seabed Hard Mineral Resources Act 30 USC § 1427; Emergency Planning and Community Right-to-Know Act 42 USC § 11046; Endangered Species Act 16 USC § 1540(g); Energy Conservation Program for Consumer Products 42 USC § 6305; Marine

review the standard at issue. While limited resources, budgetary constraints, and time restrictions may play into some of these missed deadlines, EPA consistently fails to argue in opposition that it is using its discretion in determining which environmental regulation or standard should be addressed in a preferential order. Instead, the Agency more often than not will enter into a “sue and settle” agreement, the effect of which is to allow private advocacy groups to set agency policy through court supervised orders, negotiated, in secret, behind closed doors.

Our research shows that from 2009 to 2012, a total of 71 lawsuits were settled under circumstances such that they can be categorized as sue and settle cases under the Chamber’s definition.⁵ These cases include EPA settlements under the Clean Air Act and the Clean Water Act, along with key Fish and Wildlife Service settlements under the Endangered Species Act. Significantly, settlement of these cases directly resulted in more than 100 new federal rules, many of which are major rules estimated to cost more than \$100 million annually to comply with.

Examples of Sue and Settle Agreements Create Costly Federal Rules
1. Utility MACT rule - up to \$9.6 billion annual costs ⁶
2. Lead Repair, Renovation & Painting rule - up to \$500 million in first-year costs ⁷
3. Oil and Natural Gas MACT rule - up to \$738 million annual costs ⁸
4. Florida Nutrient Standards for Estuaries and Flowing Waters - up to \$632 million annual costs ⁹
5. Regional Haze Implementation rules: \$2.16 billion cost ¹⁰
6. Chesapeake Bay Clean Water Act rules - up to \$18 billion cost to comply ¹¹
7. Boiler MACT rule - up to \$3 billion cost to comply ¹²
8. Standards for Cooling Water Intake Structures - up to \$384 million annual costs ¹³
9. Revision to the Particulate Matter (PM _{2.5}) NAAQS - up to \$350 million annual costs ¹⁴
10. Reconsideration of 2008 Ozone NAAQS - up to \$90 billion cost ¹⁵

Protection, Research and Sanctuary Act 33 USC § 1415(g); National Forests, Columbia River Gorge National Scenic Area 16 USC § 544m(b); Natural Gas Pipeline Safety Act 49 USC § 60121; Noise Control Act 42 USC § 4911; Ocean Thermal Energy Conservation Act 42 USC § 9124; Outer Continental Shelf Lands Act 43 USC § 1349(a); Powerplant and Industrial Fuel Use Act 42 USC § 8435; Resources Conservation and Recovery Act 42 USC § 6972; Safe Drinking Water Act 42 USC § 300j-8; Surface Mining Control and Reclamation Act 30 USC § 1270; Toxic Substances Control Act 15 USC § 2619.

⁵ U.S. Chamber of Commerce, *Sue and Settle: Regulating Behind Closed Doors* (May 2013) (available at <https://www.uschamber.com/sites/default/files/documents/files/SUEANDSETTLEREREPORT-Final.pdf>).

⁶ Letter from President Obama to Speaker Boehner, *supra* note 10.

⁷ 75 Fed. Reg. 24,802, 24,812 (May 6, 2010).

⁸ Fall 2011 Regulatory Plan and Regulatory Agenda, “Oil and Natural Gas Sector-NSPS and NESHAPS,” RIN: 2060-AP76.

⁹ EPA, Proposed Nutrient Standards for Florida’s Coastal, Estuarine & South Florida Flowing Waters (Nov. 2012).

¹⁰ William Yeatman, *EPA’s New Regulatory Front: Regional Haze and the Takeover of State Programs* (July 2012).

¹¹ Sage Policy Group, Inc., *The Impact of Phase I Watershed Implementation Plans on Key Maryland Industries* (April 2011); *Chesapeake Bay Journal* (Jan. 2011).

¹² Letter from President Obama to Speaker Boehner, *supra* note 10.

¹³ 2012 Regulatory Plan and Unified Agenda, “Standards for Cooling Water Intake Structures,” RIN: 2040-AE95.

¹⁴ EPA, “Overview of EPA’s Revisions to the Air Quality Standards for Particle Pollution (Particulate Matter) (2012).

b. Chevron Deference Allows for More Aggressive Regulation

The U.S. Supreme Court's decision in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) ("*Chevron*") has played an important role in the expansion of federal agencies' regulatory missions and claimed authority. As Justice Scalia noted in a subsequent case, "Under *Chevron* . . . if a statute is unambiguous the statute governs; if, however, Congress' silence or ambiguity has 'left a gap for the agency to fill,' courts must defer to the agency's interpretation as long as it is 'a permissible construction of the statute.'"¹⁶

It should come as no surprise that agencies have invoked *Chevron* to pursue increasingly aggressive regulatory agendas, claiming Congress vested them with policy-making power through alleged "ambiguities" in statutes written in the 1970s and 1980s. Unfortunately, some courts have been willing to play along, finding so-called "gaps" in statutes where Congress did not intend them. The exceptionally broad deference afforded agency decision-making by some courts clearly diminishes the ability of both Congress and the courts to effectively oversee agency action. The result is that poorly-conceived and poorly-drafted rules too often survive legal challenges and take effect. If Congress desires to regain even minimal control over agencies, the scope of court deference to agency interpretations of statutes must be clearly delineated and limited.

II. STATES IMPLEMENT MOST FEDERAL ENVIRONMENTAL REGULATIONS

The real victims of these missed deadlines and the consequential sue and settlement deals are the states. States implement approximately **96.5%** of the environmental laws that are delegated to them.¹⁷ As a result, the success of the EPA often depends on the states to which the Agency provided \$3.6 billion in 2013 for the administration of its programs.¹⁸ That means that federal grants represent between 26% - 29% of the environmental budgets of the states.¹⁹ The bottom line: states continue to do the lion's share of the implementation of federal environmental programs without being fully compensated.

As shown in the chart below, states implement approximately **96.5%** of federal environmental programs.²⁰ This is a tremendous burden for states, particularly from a time, money and resource perspective. To add to the difficulties that states face, according to the Environmental Council of States (ECOS), states have seen a trend in declining funds from the federal government to implement these programs.²¹ Federal budget documents confirm that the EPA's State and Tribal Assistance Grants (STAG) budget has decreased significantly in recent years.²² While the largest funding source for state environmental agencies is permit fees, federal

¹⁵ Letter from President Obama to Speaker Boehner, *supra* note 10.

¹⁶ *Stinson v. United States*, 508 U.S. 36, 44 (1993).

¹⁷ See https://www.dropbox.com/s/jgdbu4rql29oexh/EEnterprise%20One%20Pager%205_21%20FINAL.docx.

¹⁸ See EPA FY 2014 Budget in Brief, p. 87 (<http://www2.epa.gov/planandbudget/fy2014>).

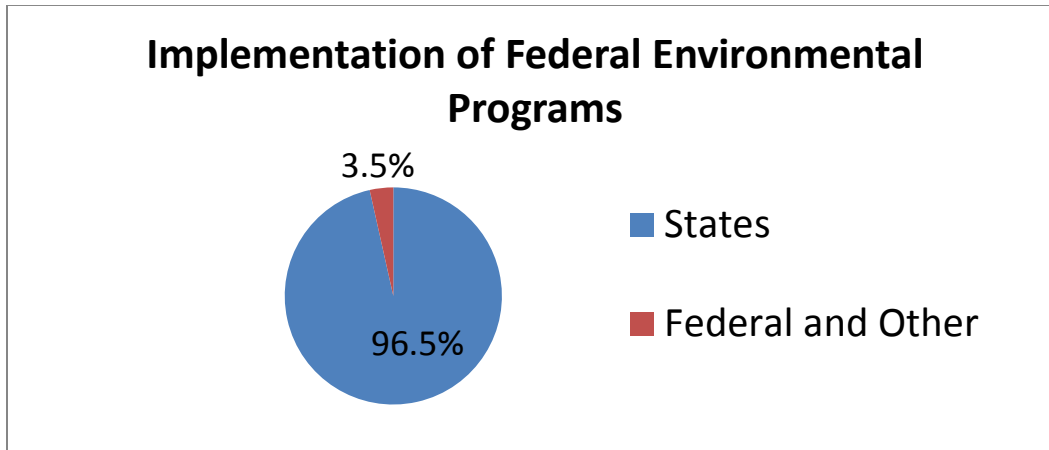
¹⁹ See https://www.dropbox.com/s/jgdbu4rql29oexh/EEnterprise%20One%20Pager%205_21%20FINAL.docx.

²⁰ *Id.* The chart on page 4 ("Implementation of Federal Environmental Programs") is based upon information from ECOS (https://www.dropbox.com/s/jgdbu4rql29oexh/EEnterprise%20One%20Pager%205_21%20FINAL.docx).

²¹ *Id.*

²² See EPA FY 2014 Budget in Brief, p. 87 (<http://www2.epa.gov/planandbudget/fy2014>).

funding is the second largest source. ECOS reports that “[d]ecreasing funds from the federal government jeopardize states’ ability to implement federally delegated programs and policies.”²³ These problems will be significantly compounded by the fact that soon the states also will have to administer EPA’s Clean Water Rule, Clean Power Plan and new Ozone Standards.



We, the regulated community, recognize and appreciate the fact that states are carrying such a huge burden and doing so with shrinking resources. Indeed, that burden is only going to grow in the future as the EPA issues many more complex and costly regulations. As discussed above, the agency is poised to finalize three historically significant regulations – the WOTUS rule, the Clean Power Plan, and the ozone NAAQS – within the next six months. This reality amounts to a sobering conclusion – EPA issues mandate after mandate on the states and regulated community, but the states can only do so much with their resources. There has to be a limit to EPA mandates. States are being asked to do more and more with less and less when it comes to implementing federal environmental programs and policies.

States bear the burden of implementing 96.5% of federal environmental programs, and with fewer and fewer resources. The EPA should be considering this fact in its regulatory process, i.e. refrain from revising the ozone NAAQS until the current standard is fully implemented.

III. HISTORICAL IMPACTS OF THE REGULATORY PROCESS

In 2014, the U.S. Chamber conducted a detailed analysis of federal rulemakings to assess the cumulative impact of the many thousands of regulations finalized over the past few decades:²⁴ The data shows that from 2000 to 2013, a total of **30** rules from Executive Branch agencies, each with a cost of more than **\$1 billion** per year, are now imposing nearly **\$110 billion** in costs each year on the U.S. economy.²⁵ While the high cost of these rules is important,

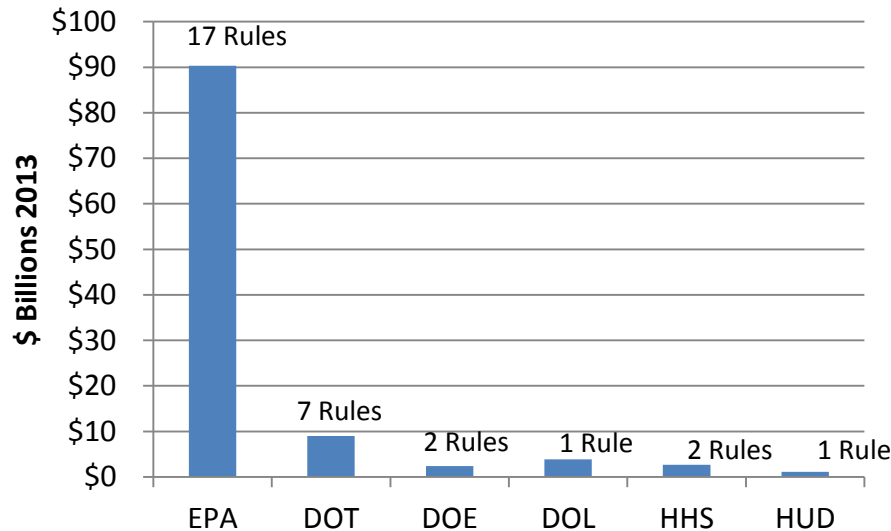
²³ See https://www.dropbox.com/s/jgdbu4rq129oexh/EEEnterprise%20One%20Pager%205_21%20FINAL.docx.

²⁴ U.S. Chamber of Commerce, *Charting Federal Costs and Benefits* (August 2014), available at https://www.uschamber.com/sites/default/files/021615_fed_regs_costs_benefits_2014reportrevise_jrp_fin_1.pdf

²⁵ Independent regulatory agencies (e.g. the Federal Communications Commission (FCC), Securities and Exchange Commission (SEC), and Commodities Futures Trading Commission (CFTC)) are not subject to Executive branch

these rules are typically also highly complex and burdensome. Regulated entities—including small businesses and small governmental entities like city and county governments—must spend time and resources to comprehend what is required by a new regulation and to take steps to comply. The rules are far more intrusive than smaller rules and have the potential to have profound effects (often unintentional) on fundamental sectors of our national economy (e.g., energy, financial institutions, healthcare, education, and the Internet).

**Rules Costing More Than \$1 Billion by Agency
2000–2013²⁶**



Significantly, 17 out of 30 of the \$1 billion or more per year rules issued by federal Executive Branch agencies were issued by the EPA. Based on the government’s data, the 17 EPA rules made up 82.5% of the cost of all 30 rules. And EPA is set to impose much more regulatory burden in just the coming months.

IV. AND NOW THE PERFECT REGULATORY STORM

By the end of 2015, within just a six-month time span, EPA plans to finalize and issue three massive, sweeping regulatory programs. Each of these new programs has the potential to profoundly affect people in every region of the country, and in virtually every community.

oversight by the Office of Management and Budget (OMB) and do not routinely perform RIAs as directed by OMB Circular A-4 guidance on cost-benefit analysis. Consequently, even in the cases when independent regulatory agencies estimate the costs and benefits of their regulations, they generally do not adhere to the standards established and enforced by OMB and the cost estimates are often not complete or comparable.

²⁶ Sources: EPA rules from agency RIAs; other agencies’ rules from OMB *Draft 2013 and Draft 2014 Reports to Congress on Costs and Benefits of Regulations*.

A. Ozone NAAQS Revision

The EPA is currently undertaking the five-year review of the NAAQS for ground-level ozone. In December 2014, the EPA proposed lowering the ozone NAAQS from its current level of 75 parts per billion (ppb) to a range between 65-70 ppb. Lowering the ozone standard to those levels could lead to nonattainment designations for many areas of the country. A nonattainment designation can hamper severely economic development and construction in an area. According to a February 2015 National Association of Manufacturers economic study, a 65 ppb standard could reduce U.S. GDP by \$140 billion annually, result in 1.4 million fewer jobs, and cost the average U.S. household \$830 in lost consumption – each year from 2017 to 2040. That would mean a total of \$1.7 trillion in lost U.S. GDP between 2017 and 2040.

The Chamber, along with other business and industry stakeholders, have advocated for EPA to retain the current 2008 ozone standard (75 ppb) for a number of reasons, including that the current standard still has not been fully implemented due to EPA's self-inflicted delays. Counties were not designated as nonattainment under the 2008 standard until April 2012. Also, EPA did not finalize the 2008 implementation guidance until just recently in February 2015. States are committing time and resources to meet the 75 ppb standard; the proposed rule would strain limited state resources and fail to give states a chance to meet the current standard. Furthermore, other concerns with the proposed rule include EPA's failure to justify the need for a lower standard in the record, its failure to address the fact that the proposed standard is approaching natural background levels of ozone in certain areas, and its failure to consider significant evidence showing the movement of ozone from foreign sources, including Asia, Canada and Mexico. Failing to address these issues means EPA may be setting an ozone standard with which it is impossible for much of the country to comply.

B. The Waters of the United States Rule

The revised definition of "Waters of the United States" issued jointly on May 27, 2015 by the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers (Corps), expands federal Clean Water Act jurisdiction far beyond the limits explicitly established by Congress and affirmed by the courts. The rule will, for the first time, give federal agencies direct permitting and enforcement authority over many land use decisions that Congress intentionally reserved to the States. It will intrude so far into traditional State and local land use authority that it is difficult to imagine that any discretion would be left to State, county and municipal governments.

The WOTUS rule will affect many sectors of the U.S. economy, including construction, homebuilding, agriculture, transportation, real estate, energy production and transmission, and manufacturing. The rule will have a chilling effect on project development and force property owners to hire consultants, specialists, and lawyers to understand how they will be impacted and whether current or planned land uses will trigger federal permitting or enforcement. The rule puts heavy new burdens on states and localities to comply with federal requirements, including having to wait for federal approval before undertaking critical infrastructure maintenance projects. In sum, the waters rule creates confusion and an unwillingness to move forward with ordinary activities and projects for businesses, property owners, and state and local governments.

C. Proposed Greenhouse Gas Regulations on Power Plants

In September 2013, EPA proposed a rule for regulating greenhouse gas emissions from new power plants. The proposed emission limit for new coal-fired power plants is so stringent that any new coal-fired power plant would require carbon capture and sequestration (CCS) technology in order to comply. EPA, however, failed to show that CCS is a commercially-viable and adequately-demonstrated technology for new coal-fired power plants. The proposed regulation also has raised serious concerns about the ability to maintain a diverse energy supply in order to ensure steady and reliable streams of electricity to power the country.

In June 2014, EPA proposed the “Clean Power Plan (CPP),” a proposed rule under the Clean Air Act that would regulate greenhouse gas emissions from existing power plants. The proposed rule sets a goal of a 30% nationwide reduction of 2005 GHG emission levels by 2030. Using Section 111(d) of the Clean Air Act, the proposed CPP would create state-specific reduction goals that “reflect the EPA’s calculation of the emission reductions that a state can achieve through the application of ‘best system of emissions reduction (BSER).’” Portions of those reduction goals would have to be met on an interim basis in 2020, and then the full reductions achieved between 2020 and 2030.²⁷

There are many significant concerns with EPA’s proposed Clean Power Plan and the impacts that it will have on reliable and affordable electricity in the U.S. for industrial and residential consumers. For example, the Clean Air Act does not allow EPA to regulate GHG emissions from existing power plants under Section 111(d) because these same power plants are already regulated by EPA under Section 112 of the Clean Air Act. Additionally, even if EPA believes it has the basic authority to regulate existing facilities, Section 111(d) allows EPA to set emission standards based solely on emission reductions that can be achieved “inside the fence” at power plants. The CPP proposal, however, requires substantial reductions “outside the fence,” which in turn requires the regulation of entities separate and apart from the emissions purportedly subject to regulation and otherwise not even subject to Clean Air Act regulation. These are just two examples of scores of legal issues that have been raised regarding the CPP.

Economically, the proposed CPP threatens to cause serious harm to the U.S. economy, raising energy prices and costing jobs.²⁸ Regarding electric reliability, EPA has failed to conduct much-needed comprehensive and independent reliability analyses to determine the impacts of the proposed CPP on the country’s electrical grids, particularly given that EPA itself projects that the proposal would cause up to 49,000 megawatts of additional coal-fired electric generating capacity to retire by 2020. The proposed CPP also suffers from rushed timelines and deadlines: (1) states repeatedly have said that they need more time to develop state implementation plans; (2) many states also have called for elimination of the interim emissions reduction goals because

²⁷ EPA developed those state-specific goals using four “building blocks”: (1) heat rate improvements at coal-fired electricity generating units (EGUs); (2) replacing coal-fired electricity with increased generation at existing natural gas combined cycle EGUs; (3) increasing nuclear and renewable EGU capacity; and (4) demand-side energy efficiency.

²⁸ EPA’s own estimates project that its proposed rule will cause nationwide electricity price increases averaging between 6-7% in 2020, and up to 12% in some areas. EPA also estimates annual compliance costs between \$5.4 and \$7.4 billion in 2020, rising up to \$8.8 billion in 2030. Notably, these are power sector compliance costs only; they do not include the cascading impacts of higher electricity rates on overall economic activity.

compliance with them is impossible; and (3) there are serious questions about whether the infrastructure needed to comply with the CPP can be built within the proposed rule's deadlines.

V. EPA HAS NOT CONSIDERED THE CUMULATIVE IMPACT OF THE THREE REGULATORY ACTIONS

Since the first agency was established, Congress has attempted to control agency rulemakings through legislation, oversight and funding, but with little to no impact. Many of the adverse impacts of the regulations being discussed today would have been addressed by EPA had it merely implemented congressional mandates concerning the impact on jobs, the use of the best data in rulemakings, the impact of the regulations on small business, state and local governments, and the cumulative impact of regulations.

Because it elected to issue these three rules on the current, compressed timetable, EPA chose to ignore several statutory and administrative requirements to carefully consider the cumulative impacts of these rules, along with relevant rules the agency previously issued. Before taking the unprecedented step of issuing three such sweeping and complex new programs within months of one another, the agency should have taken the time to fully understand how each of these rules would complement—or conflict with—the others. Congress has mandated such consideration numerous times but EPA refuses to comply with the direction being given by Congress.

A. EPA Failed to Conduct the Congressionally Mandated Ongoing Employment Impacts Evaluation

Congress has debated whether regulations cause adverse impacts on industry, communities and job loss since at least 1970. In the 95th Congress (1977-1978) the debate over the employment impacts of regulation was clear, direct, and extensive. The Committee noted:

Among the issues which have arisen frequently since the enactment of the 1970 Amendments is the extent to which the Clean Air Act or other factors are responsible for plant shutdowns, decisions not to build new plants, and consequent losses of employment opportunities.

* * *

[I]t has been argued that environmental laws have in fact been responsible for significant numbers of plant closings and job losses.

In any particular case in which a substantial job loss is threatened, in which a plant closing is blamed on Clean Air Act requirements, or possible new construction is alleged to have been postponed or prevented by such requirements, the committee recognized the need to determine the truth of these allegations. For this reason, the committee agreed to . . . a mechanism for determining the accuracy of any such allegation.²⁹

²⁹ 95 Cong. House Report 294; CAA77 Leg. Hist. 26 at 227.

The Committee went on to state:

[T]he Administrator is mandated to undertake an ongoing evaluation of job losses and employment shifts due to requirements of the act. This evaluation is to include investigations of threatened plant closures or reductions in employment allegedly due to requirements of the act or any actual closures or reductions which are alleged to have occurred because of such requirements.³⁰

In conference, the Senate concurred with the House employment effects provision that addressed the EPA Administrator's evaluations and investigations of loss of employment and plant closure.³¹

Subsequently, in the Clean Air Act Amendments of 1977, Congress enacted a provision, now codified as section 321(a) of the Clean Air Act, which reads:

(a) Continuous evaluation of potential loss of shifts of employment

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this chapter and applicable implementation plans, including where appropriate, investigating threatened plant closures, or reductions in employment allegedly resulting from such administration or enforcement.”³²

Over the years EPA has chosen to ignore the Congressional mandate to conduct a continuous evaluation of loss or shifts in employment from the implementation of environmental statutes. For this reason, the debate over the impacts on jobs due to regulations has continued without EPA ever providing Congress with the mandated information, which is critical for effective oversight of the agency. In *Whitman v. American Trucking Association*, Justice Scalia, writing for a near-unanimous Court, settled the debate, writing:

In particular, the economic cost of implementing a very stringent standard might produce health losses sufficient to offset the health gains achieved in cleaning the air – for example, by closing down whole industries and thereby impoverishing the workers and consumers dependent upon those industries.

That is unquestionably true, and Congress was unquestionably aware of it. Thus, Congress had commissioned in the Air Quality Act of 1967 (1967 Act) ‘a detailed estimate of the cost of carrying out the provisions of this Act; a comprehensive study of the economic impact of air quality standards on the Nation’s industries, communities and other contributing sources of pollution.’ Sec.2, 81 Stat. 505. The 1970 Congress, armed with the results of this study, see *The Cost of Clean Air*, S. Doc. No. 91 – 40 (1969) not

³⁰ *Id.*

³¹ 95 Cong. Conf. Bill H.R. 6161; CAA77 Leg. Hist. 24.

³² Section 321(A) of the Clean Air Act; 42 U.S.C. § 7621. This section became law as part of the 1977 Amendments to the Clean Air Act.

only anticipated compliance costs could injure the public health, but provided for that precise exigency.³³

In 2009 when a large number of regulations were being issued by EPA, six U.S. Senators wrote to EPA requesting the results of its continuing Section 321(a) evaluation of potential loss or shifts of employment which may result from the suite of regulations EPA had proposed or finalized.³⁴ On October 26, 2009, EPA responded to the six Senators stating “EPA has not interpreted CAA section 321 to require EPA to conduct employment investigations in taking regulatory actions.”³⁵

Therefore, a debate that started 45 years ago and which resulted in Congress directly mandating a study of the employment effects of regulations so as to determine the truth of conflicting allegations about whether regulations adversely impact jobs is still unresolved. EPA, the agency charged with doing the continuous evaluation of potential loss or shifts in employment due to its regulations, has steadfastly refused to conduct such an evaluation.

If EPA had been conducting Section 321(a) employment evaluations since 1977, Congress would be in a much better position to understand how the three new rules—taken individually or in combination with one another—would affect the lives of ordinary Americans. Congress and the public would have a good baseline against which new regulatory actions could be measured.

EPA must comply with its statutory obligation under section 321(a) of the Clean Air Act and conduct a continuing evaluation of the employment impacts of CAA regulations.

B. EPA Failed to Utilize the Information Quality Act

Perhaps the most effective mechanism for ensuring federal agencies use high quality data in their rulemakings is to vigorously implement the Information Quality Act (IQA).³⁶ The IQA was designed to impose greater transparency and improve the quality of agency information, especially with respect to non-regulatory information disseminated by administrative agencies with respect to scientific and statistical matters. It requires:

- Compliance with OMB’s information quality guidelines that mandate transparency, full disclosure of all data and reports used to justify or formulate an agency position on a given topic, and full disclosure of all uncertainties or error sources so that a member of the public may evaluate and reproduce the results of an agency analysis or study.

³³ *Whitman v. American Trucking Association*, 531 U.S. 457 (2001) at 466 (emphasis added).

³⁴ Letter from Senators Vitter, Riech, Johanns, Inhofe, Ensign and Hatch to EPA Administrator Lisa Jackson, October 13, 2009.

³⁵ Letter from EPA Assistant Administrator Gina McCarthy to Senator Inhofe (October 26, 2009) at 2.

³⁶ 44 U.S.C. §§ 3504(d)(1), 3516.

- Use of the best available, peer-reviewed science and supporting studies conducted in accordance with sound and objective scientific practices and data collected by accepted methods or best available methods.
- For claims, statements or policies regarding human health or environmental risks, the agency must specify (1) each population addressed by any estimate of public health effects; (2) the expected risk or central estimate of risk for the specific populations; (3) each appropriate upper-bound or lower-bound estimate of risk; (4) each significant uncertainty identified in the process of the assessment of public health effects and studies that would assist in resolving the uncertainty; and (5) peer-reviewed studies that support, are directly relevant to, or fail to support any estimate of public health effects and the methodology used to reconcile inconsistencies in the scientific data.³⁷
- A procedure to allow affected persons to “seek and obtain” correction or disclosure of information that fails OMB information quality requirements.

Unfortunately, federal agencies have taken the position that they need not comply with IQA because there is no private right of action to enforce the statute.³⁸

EPA should follow the IQA by fully disclosing data and reports used to justify its positions and utilizing the best peer-reviewed science.

C. EPA Failed to Comply with the Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (“UMRA”) requires federal agencies to assess the effects of the rule on state and local governments and the private sector before imposing mandates on them of \$100 million or more per year without providing federal funding for state and local governments to implement the mandate. In essence, UMRA is intended to prevent federal agencies from shifting the costs of federal programs to the states. In the WOTUS rule, EPA and the Corps certified that “[t]his action does not contain any unfunded mandate under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995, (12 U.S.C. §§ 1531-1538), and does not significantly or uniquely affect small governments.”³⁹ This definitive statement is clearly at odds with the facts, however. For example, according to the National Association of Counties, 1,542 of the 3,069 counties in the nation (50%) have populations of less than 25,000,⁴⁰ and are therefore protected by both the UMRA (and RFA). These counties are

³⁷ Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication, 67 Fed. Reg. 8452, 8457-58 (Feb. 22, 2002).

³⁸ *Harnoken v. Dep’t of Justice*, No. C 12-629 CW. 2012 U.S. Dist. LEXIS 17145, at *24 (N.D. Cal. Dec. 3, 2012) (ruling on the DOJ and OMB’s assertion that IQA does not provide a private right of action or judicial review).

³⁹ U.S. Environmental Protection Agency & U.S. Department of the Army, Economic Analysis of the EPA-Army Clean Water Rule (May 2015), at 61, *available at* http://www2.epa.gov/sites/production/files/2015-05/documents/final_clean_water_rule_economic_analysis_5-15_2.pdf. *See also* Definition of “Waters of the United States” Under the Clean Water Act; Proposed Rule, 79 Fed. Reg. 22,220 (April 21, 2014).

⁴⁰ Testimony of Warren Williams, General Manager, Riverside County Flood Control & Water Conservation District, submitted on behalf of the National Association of Counties, before the House Transportation and Infrastructure Committee, Subcommittee on Water Resources and Environment (June 11, 2014) at page 2.

responsible for building and maintaining 45% of the roads and associated ditches in 43 states,⁴¹ which is where some of the largest permitting impacts of the WOTUS rule are expected to be felt.

These counties and districts are liable under the law to maintain the integrity of ditches to prevent flooding, even if they are unable to obtain a section 404 permit in a timely manner to do the work. In *Arreola v. Monterey County*, 99 Cal. App.4th 722 (2002), a California appeals court held that a county is liable for not maintaining a levee that failed due to overgrowth of vegetation, even though the county had been forced to wait to obtain a section 404 permit to do the necessary work. These counties will be required to bear the cost of obtaining Clean Water Act permits in greatly-expanded areas, but will receive no federal funding for the increased responsibility imposed by the rule.

EPA should fulfill its statutory obligation under UMRA by not imposing unfunded mandates over \$100 million on state and local governments without providing funding.

D. EPA Failed to Comply with the Regulatory Flexibility Act

Congress passed the Regulatory Flexibility Act (“RFA”) in 1980 to give small entities a voice in the federal rulemaking process.⁴² Put simply, the RFA requires federal agencies to assess the economic impact of their planned regulations on small entities and to consider alternatives that would lessen those impacts. The RFA requires each federal agency to review its proposed and final rules to determine if the rule in question will have a “significant economic impact on a substantial number of small entities.”⁴³ If the rule is expected to have such an impact, the agency must assess the anticipated economic impacts of the rule and evaluate whether alternative actions that would minimize the rule’s impact would still achieve the rule’s purpose.

Since 1996, EPA specifically has been required to conduct Small Business Advocacy Review Panels when a planned rule is likely to have a significant impact. Small entity representatives—who speak for the sectors that are likely to be affected by the planned rule—advise the Panel members on real-world impacts of the rule and potential regulatory alternatives. The Panel process is the best opportunity for EPA to get face-to-face interaction with small entities and get a sense of the ways that small entities differ from their larger counterparts in their ability to comply with regulatory mandates. Because the Panel occurs early, before the planned rule is publicly proposed, it also represents the best opportunity for small entities to have real input into the final design of a rule.

In the case of the CPP, EPA argues that the “emissions guidelines established under CAA Section 111(d) do not impose any requirements on regulated entities and, thus, will not have a significant economic impact upon a substantial number of small entities,”⁴⁴ so the RFA does not

⁴¹ *Id.*

⁴² 5 U.S.C. §§ 601-612.

⁴³ 5 U.S.C. §605(b).

⁴⁴ 79 Fed. Reg. 34,947 (June 18, 2014).

apply. As EPA itself admits, however, electricity prices – one of the largest concerns of small businesses – will go up as a result of this proposal. It is also very possible that small businesses themselves (e.g., small refiners) will be called upon to shoulder some of the compliance burden for the proposal. If individual states choose to go beyond EGUs to achieve emissions reductions under the proposal, small businesses, particularly industrial and manufacturing facilities, could be faced with the expenses associated with reducing emissions from their facilities. These are all issues that the EPA is required by law to evaluate and analyze through the RFA and a Small Business Advocacy Review Panel process. Only until recently and after much of the CPP rulemaking process had been undertaken, however, the agency simply ignored the impacts and the RFA requirement.

Likewise, EPA certified without any factual evidence that the WOTUS rule actually represents a *reduction* in the regulatory burdens affecting small entities, and that the rule would not have a substantive or direct regulatory effect on any small entity, so the RFA doesn't apply. Yet, because the WOTUS rule defines “tributaries” to include ditches, flood channels, and other infrastructure, businesses and small governmental jurisdictions will be subject to section 404 permitting requirements for work in ditches, on roads adjacent to ditches, on culverts and bridges, etc. that disturbs soil or otherwise affects the “tributary.” These permits can take more than a year to obtain, at a median cost of \$155,000.⁴⁵ This is why the U.S. Small Business Administration’s Office of Advocacy has publicly advised EPA and the Corps that they improperly certified the WOTUS proposal under the RFA.⁴⁶

EPA should satisfy its statutory obligations under the RFA by convening a Small Business Advocacy Review Panel for important proposed regulations, like the Clean Power Plan and the WOTUS rule.

E. EPA Failed to Comply with Clean Air Act section 109(d)(2)(C)

Section 109 of the Clean Air Act provides that, in advising the EPA Administrator about the adequacy of an existing National Ambient Air Quality Standard (NAAQS) and potential revision of the NAAQS, the independent Clean Air Science Advisory Committee, review committee created pursuant to section 109(d)(2)(a) will “advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.”⁴⁷ While section 109 would appear to be an excellent tool for understanding how a major revision in a NAAQS standard—such as the upcoming ozone revision—is likely to affect the welfare, social stability, and economic health of people across the nation, EPA has declined to ask the

⁴⁵ EPA and U.S. Army Corps of Engineers, *Economic Analysis of Proposed Revised Definition of Waters of the United States* (March 2014) at 12.

⁴⁶ Letter from Winslow Sargeant, Chief Counsel for Advocacy, to Gina McCarthy, Administrator, EPA and General John Peabody, Deputy Commanding General, Corps of Engineers, on Definition of “Waters of the United States” Under the Clean Water Act (October 1, 2014) at 4.

⁴⁷ 42 U.S.C. § 7409(d)(2)(C)(iv).

Clean Air Science Advisory Committee to provide this important information.⁴⁸

EPA should consult the Clean Air Science Advisory Committee pursuant to Clean Air Act section 109(d)(2)(C), and consider any adverse public health, welfare, social, economic or energy effects which may result from strategies to attain or maintain national air quality standards.

F. EPA Failed to Examine Inconsistent or Incompatible Regulations as Required by Executive Order 12,866

Executive Order 12,886⁴⁹ requires federal agencies to conduct several analyses prior to proposing or finalizing new regulations. The Executive Order makes agencies responsible to ensure that a new regulation will not conflict with other requirements, specifying that “each agency shall avoid regulations that are inconsistent, incompatible, or duplicative with its other regulations or those of other Federal agencies.”⁵⁰

In the case of the three rules at issue, EPA should have fully considered how each rule, if finalized, might affect regulated entities’ ability to comply with the other two. For example, as noted above, EPA itself projects that the Clean Power Plan will cause up to 49,000 megawatts of coal-fired electric generating capacity to retire by 2020. To replace this generating capacity, utilities will need to construct fuel delivery infrastructure such as pipelines, storage, railroad track, and improved roads. These infrastructure projects will have to be completed before the existing coal-fired generating units are taken off-line. Yet these projects will be subject to more extensive permitting and reviews by virtue of the WOTUS rule. EPA did not properly account for the increased costs and delays that utilities, pipeline companies, railroads, and other companies will face in complying with the WOTUS rule, which is made necessary because of the need to comply with the Clean Power Plan.

EPA should consider whether a conflict exists regarding regulated entities’ ability to comply with stricter ozone standards, the redefinition of WOTUS, and the Clean Power Plan at the same time pursuant to Executive Order 12,866.

⁴⁸ *EPA Science Advisory Panels: Preliminary Observations of the Processes for Providing Scientific Advice Before the U.S. Senate Subcommittee on Superfund, Waste Management, and Regulatory Oversight, Committee on Environment and Public Works*, 114th Cong. (2015) (statement of J. Alfredo Gomez, Director of Natural Resources and Environment, GAO) available at

http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=cc9167e9-7dd1-4c53-8cca-8a2820b69108&CFID=181664324&CFTOKEN=79870804.

⁴⁹ Executive Order 12,866, “Regulatory Planning and Review,” 58 Fed. Reg. 51,735 (Sept. 30, 1993).

⁵⁰ *Id.* at section 1(b)(10).

G. EPA Failed to Analyze the Cumulative Impacts of the Regulations as Required by Executive Order 13,563

Executive Order 13,563, issued by the Obama administration in 2011,⁵¹ even more clearly calls on federal agencies to review and understand the cumulative impacts of their regulatory programs. Section 1(b)(2) provides that each agency must, among other things, “tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, *taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.*”⁵² Again, EPA should have complied with this Executive Order when it planned to develop three massive rulemakings that would be timed to take effect virtually one on top of the other.

EPA should conduct a cumulative review of costs imposed on regulated entities by stricter ozone standards, the redefinition of WOTUS, and the Clean Power Plan pursuant to Executive Order 13,563.

H. What EPA Would Have Discovered If It Had Used Congressionally Mandated Regulatory Processes

If EPA had not chosen to ignore the vast array of analytical requirements under the RFA, UMRA, Clean Air Act sections 109 and 321, as well as Executive Orders 12,866 and 13,563, it would have discovered serious inconsistencies and conflicts between its three rules. Here are a few examples of those inconsistencies:

- As noted above, the massive new infrastructure requirements that are at the heart of the Clean Power Plan will be complicated and delayed by the expanded number of Clean Water Act permits under the WOTUS rule. In addition to the cost of applying for federal permits, infrastructure developers will have to pay mitigation costs for wetlands restoration, which often approach or exceed all other project costs.
- When EPA was estimating the attainment area impact of Ozone NAAQS, it completely ignored the probable shifts in criteria pollutant levels resulting from the Clean Power Plan. Because the CPP requires such a massive reorganization of the nation’s electric generation infrastructure, the reshuffling of the deck will dramatically shift the current map of criteria pollutant concentrations as power companies site new generation facilities away from existing sites. In particular, this could undermine the ability of many air districts to meet the current standards, let alone the tightened Ozone NAAQS standards EPA will be finalizing around the same time as the CPP.
- This reshuffling will make it extremely difficult for states to properly model their ozone reduction efforts. The Ozone NAAQS standard will also make the job of obtaining preconstruction permits for new power plants under Section 165 of the Clean Air Act

⁵¹ Executive Order 13,563, “Improving Regulatory and Regulatory Review,” 76 Fed. Reg. 3,821 (Jan. 18, 2011).

⁵² *Id.* at 3,821 (emphasis added).

much more difficult and costly, because more areas will either be classified in non-attainment—thus requiring costly offsets (if they are available)—or the area will be much closer to non-attainment. More extensive modeling and air monitoring will be required to show that a new project made necessary by the CPP can be built, adding significantly to the cost and delays for each project.

- In its economic analysis of the WOTUS rule, EPA based its conclusion that the rule would only increase the amount of federal jurisdictional waters under the CWA by 2.84% to 3.65% on a *very* small sample of negative determinations from two preceding years, essentially using just a tiny slice of pre-WOTUS determinations. EPA ignored conflicting evidence from federal and state authorities that the rule could impose anywhere from a 300% to 800% increase in federal jurisdictional waters. By ignoring these congressional mandates for developing effective regulations, EPA fails to secure an understanding of the real world impacts of its rules.

Undoubtedly, more examples of inconsistencies will be discovered as these three major regulations continue to move through the regulatory process and eventually must be implemented. Much of the confusion and deficiencies stemming from these inconsistencies could have been avoided had the EPA conducted a more thorough analysis of the cumulative impacts of these regulations.

VI. LEGISLATIVE RECOMMENDATIONS

A. The Regulatory Accountability Act (H.R. 185)

A modernized APA is needed to restore the kinds of checks and balances on federal agency action that the 1946 APA—the “bill of rights” for the regulatory state—intended to provide the American people. Congress has a huge stake in getting the rulemaking process right if it is to preserve its Article 1 Constitutional Responsibility. H.R. 185, the “Regulatory Accountability Act of 2015,” which passed the House in January, would address this deficiency. The legislation would put balance and accountability back into the federal rulemaking process, without undercutting vital public safety and health protections. The bill focuses on the process agencies must use when they write the biggest regulations. Compelling agencies to carefully follow process will produce better substance, which results in better regulations.

The Act would require federal agencies do a better job of explaining the rationales for new rules and being more open and transparent when they write those rules. The Act simply requires additional process to ensure a better rulemaking product; it does *not* compel any particular rulemaking outcome. The Act will bring the Administrative Procedure Act of 1946 into a modern era where Congress must oversee over 425 agencies and hundreds of thousands of rules.

B. The Sunshine for Regulatory Decrees and Settlements Act (H.R. 712)

On February 4, 2015, the Sunshine for Regulatory Decrees and Settlements Act of 2015 was introduced in the House as H.R. 712 and in the Senate as S. 378. The bill would (1) require

agencies to give notice when they receive notices of intent to sue from private parties, (2) afford affected parties an opportunity to intervene *prior to the filing* of the consent decree or settlement with a court, and (3) publish notice of a proposed decree or settlement in the *Federal Register* and take (and respond to) public comments at least 60 days prior to the filing of the decree or settlement. The bill also would require agencies to do a better job showing that a proposed agreement is consistent with the law and in the public interest.

C. Secret Science Bill (H.R. 1030)

In furthering the goal of better regulatory governance through transparency and sound justification for rules, the Chamber supports H.R.1030, the “Secret Science Reform Act of 2015.” The Chamber supports Chairman Lamar Smith’s efforts through the Secret Science Reform Act to provide greater transparency and accountability to EPA’s regulatory structure. The Secret Science Reform Act would require that before the EPA proposes, finalizes or disseminates covered risk, exposure, or hazard assessments as well as criteria documents, standards, limitations, regulations, regulatory impact analyses, or guidance all scientific and technical information relied upon in support of the action be: (1) grounded in the best available science; (2) specifically identified; and (3) made publicly available for independent analysis and substantial reproduction. Such critical safeguards, as the Chamber has previously noted, will assure the public that the data federal agencies rely on is scientifically sound and unbiased.

VII. CONCLUSION

The goal of a regulatory agency should be to produce regulations that implement the intent of Congress in the most efficient way possible. Congress has provided significant guidance as to the analysis agencies must undertake to achieve Congressional intent. The analysis required by Congress is to guide the agency to make decisions based on fact, sound science and economic reality.

Unfortunately, over the decades EPA has manipulated the regulatory process through the use of citizen suits; sue and settle agreements; reliance on court deference; avoidance of congressional mandates such as IQA, Regulatory Flexibility Act, UMRA; and the outright refusal to undertake the continuing analysis of the potential loss or shifts in employment due to its regulations. The result of such conduct is an agency that issues unrestrained mandates that the states and the business community must implement regardless of cost. By ignoring the guidance provided by Congress as to how to develop regulations, EPA fails to provide Congress with the information it needs to legislate. While that is a travesty, Congress has the ability to protect itself.

There is an even deeper harm inflicted by EPA’s failure to fully analyze the impact of its regulations. That harm is the deliberate avoidance of any attempt to reach out to the people and the communities that will be adversely impacted by its actions. If the goal of every agency is to produce quality rules that implement the intent of Congress, why would an agency fail to evaluate job impacts, the cumulative impacts of regulations, or develop regulations using peer reviewed studies, the best science and economics?