

## New Executive Order Requires Public Participation in Agency Review of Regulations

by Charles Maresca, Director of Interagency Affairs

On May 10, President Obama issued an executive order requiring federal agencies to publish a semiannual notice of significant regulations that have undergone review by each agency. E.O. 13610, "Identifying and Reducing Regulatory Burdens," is the latest in a series of executive orders and memoranda on the subject of regulatory review. The new executive order establishes public participation in regulatory review, setting priorities and accountability as mandatory elements of every agency's regulatory process, which now must include review of significant regulations on an ongoing basis. "Public participation" must include a system for requesting and evaluating nominations of regulations in need of review.

The executive order requires that in establishing their review plans,

agencies "shall give priority...to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment. To the extent practicable and permitted by law, agencies shall also give special consideration to initiatives that would reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses."

By requiring the agencies to publish reports on their review priorities on a semiannual basis and to make available relevant supporting data, the order seeks to make regular, ongoing regulatory review a permanent part of agency rulemaking.



OIRA Administrator Cass R. Sunstein participated in Advocacy's regulatory roundtable on May 18. Pictured from left are John Kraemer of OIRA, Assistant Chief Counsel Bruce Lundegren, and Sunstein. Turn to page 2 for complete story.

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### OIRA Head Cass Sunstein Speaks at Advocacy Roundtable

By Bruce Lundegren, Assistant Chief Counsel

Cass R. Sunstein, the widely respected administrator of the Office of Information and Regulatory Affairs (OIRA) within the White House's Office of Management and Budget, recently spoke at one of Advocacy's small business regulatory roundtables. Sunstein, a former law professor and prolific author, taught at the University of Chicago and Harvard law schools before taking the reins of OIRA in 2009.

OIRA is a small office with a big job. OIRA coordinates review of all significant federal regulations before they can be published in the *Federal Register*, drawing on expertise across the federal government and from the public's comments. OIRA's primary concern is to ensure that regulations actually solve the problems they are intended to address, and do so in a manner that maximizes net societal benefits.

Sunstein was introduced at Advocacy's roundtable by Chief Counsel Winslow Sargeant, who stressed the close working relationship between OIRA and Advocacy. Sargeant noted that Sunstein has a keen interest in small business and has sought effective regulations that foster innovation, economic growth, and job creation.

During Sunstein's tenure at OIRA, his office has produced numerous policies and memoranda designed to improve the way government works. Chief among them has been a program that requires agencies to review all of their existing regulations to identify those that should be modified, streamlined, expanded, or repealed to reduce unnecessary burdens and costs. This effort was recently made per-

manent by President Obama's new executive order, "Identifying and Reducing Regulatory Burdens." The White House also issued a policy memorandum last year designed to ensure that federal agencies fulfill their obligation to consider the impact of their regulations on small business.

During Sunstein's presentation, he discussed how regulations can protect public health, safety, and the environment while still helping the economy. Sunstein is known as an adherent of behavioral economics and contends that there are many ways to influence people's behavior beyond direct regulation. For example, in his 2008 book, *Nudge: Improving Decisions About Health, Wealth, and Happiness*, then-Professor Sunstein (and co-author Richard Thaler) argued that by knowing how people think, policymakers can design policies that make it easier for people to choose what is best for themselves, their families, and society.

### Interagency Director Testifies at Joint Committee Hearing

by Kyle W. Kempf, Assistant Chief Counsel for Congressional Affairs

On April 25, the Office of Advocacy's Director of Interagency Affairs Charles Maresca testified at a joint committee hearing on the Report on Carcinogens (12th edition). The hearing was convened by the U.S. House of Representatives Committee on Small Business Subcommittee on Healthcare and Technology and the Committee on Science, Space and Technology Subcommittee on Investigations and Oversight.

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Sunstein's appearance was a unique opportunity for small business representatives to ask specific questions about regulatory policy. Following his remarks he engaged in a lively question-and-answer session that touched on science, regulatory policy, and agency use of guidance documents. Attendees at Advocacy's roundtable were pleased to have Sunstein speak to them, and his remarks certainly provided much to think about.

Also testifying at the hearing, "How the Report on Carcinogens Uses Science to Meet Its Statutory Obligations, and Its Impact on Small Business Jobs," was Dr. Linda Birnbaum, director of the National Institute of Environmental Health Sciences (NIEHS) and the National Toxicology Program (NTP). A second panel consisted of six additional witnesses.

Maresca's testimony was preceded by a letter from Chief Counsel

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## Message from the Chief Counsel

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### Advocacy Brings Small Business Issues Back to Washington, D.C.

by Dr. Winslow Sargeant, Chief Counsel for Advocacy

The Office of Advocacy continues exercising its unique role within government to give voice to small business issues and concerns. The past few months have seen Advocacy engage with widely diverse small business groups. From meeting with the Plumbing, Heating, and Cooling Contractors Association in Washington, D.C., to universities and high tech startups in Michigan and Ohio, America's entrepreneurs and innovators continue to seek ways to work with government in growing our economy.

Advocacy is fortunate to have a talented crew of professionals who are in tune with the small business community. Small businesses are also encouraged that the Obama Administration has issued a number of executive orders (E.O 13563, 13579, 13609, and 13610) that direct agencies to consider business size at all stages of the regulatory process. These actions are important for entrepreneurs and small business owners because they free them to focus on what they do best, which is to innovate and create jobs.

Small businesses want government to be effective. Political gridlock only leads to uncertainty. Public/private partnerships have shown that they can work. In Michigan, I met with small business owners who shared with me how pleased they are that the automobile industry is growing again. Manufacturing jobs are coming back! For our economy to grow and add jobs, we will need to build things domestically and access international markets. Entrepreneurs and small business are ready to go.

Many business owners, however, need access to capital to expand their operations and to add additional staff. This sentiment was expressed in a meeting I had at Automation Alley, Michigan's largest technology association. The lack of accessible capital for startups and small businesses remains a challenge. We know that it takes money to make money. Advocacy's annual small business lending study lists by state the banks that are lending to small businesses. This information has been invaluable to those who

may not know where to turn after a financial institution has turned them down. An update of our lending study is due this summer.

In Cleveland, my visit to the Council of Smaller Enterprises (COSE) and a local incubator that focused on innovative manufacturing added to an informative trip. The Manufacturing Advocacy and Growth Network (MAGNET), funded by the Department of Commerce's National Institute of Standards and Technology (NIST) provides business consulting and engineering services for advanced manufacturing companies. As an engineer myself, I was pleased to see the array of startup companies using resins, polymers, and ferrous and nonferrous materials to make products that reduce energy use and make manufacturing processes leaner. The MAGNET incubator, located adjacent to Cleveland State University, is helping to make Ohio's manufacturing sector more globally competitive.

There are a number of positive developments taking place in

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In April, Chief Counsel Sargeant traveled to Cleveland and participated in a business incubator event put on by JumpStart, a nonprofit organization that provides entrepreneurial support, and MAGNET (the Manufacturing Advocacy and Growth Network). Also participating were YBI (Youngstown Business Incubator), GLIDE (Great Lakes Innovation and Development Enterprise), Akron Global Business Accelerator, and BioEnterprise.



# Immigrant Entrepreneurs Ask Government To Get in Step With Cutting-Edge Startups

by Janis Reyes, Assistant Chief Counsel

Google. PayPal. YouTube. What do these successful companies have in common? These U.S. companies were all co-founded by immigrant entrepreneurs. And at one time, all of them were very, very small. In May, Assistant Chief Counsel Janis Reyes, Region IX Advocate Yvonne Lee, and Director of Economic Research Joseph Johnson met in San Jose to hear the issues of greatest concern to today's cutting-edge immigrant entrepreneurs.

Reyes and Lee held a roundtable with a group of immigrant entrepreneurs whose goal is to be the next big Silicon Valley success story. Our discussion focused on one thing: immigration and visas to remain in the United States.

Roundtable participants shared their stories on how U.S. immigration policy makes it difficult for immigrant entrepreneurs who seek to stay in the country. These are entrepreneurs who will grow their companies and create jobs. For example, each year, foreign students in advanced technology degree programs graduate from top U.S.



Participants at Advocacy's San Francisco banking forum included (from left) Michael Kay, East West Bank; Anni Chung, KTSF Channel 26; Region IX Advocate Yvonne Lee; Robin Chew, East West Bank; Joseph Johnson and Janis Reyes, Office of Advocacy; Mark Quinn, SBA District Director; Wai Li, East West Bank; Dominic Li, Asian American Bankers Association.

universities, only to be forced out of the country when they can't obtain visas. This is a concern, because U.S. companies, to be globally competitive, need to hire and retain the best talent in science and technolo-

gy fields. Businesses poised to start, expand, or take off can be caught in the middle of a bureaucratic chain of approval. To get around these challenges, one participant has put forward plans to build a ship to house potential startup companies. The ship would be moored 12 miles off the coast in order to legally circumvent immigration laws.

The message delivered at the roundtable was simple: entrepreneurs rely on a functioning immigration system. This is especially critical at startup, when founders, employees, and funding sources need to be in close proximity.

A number of attorneys at the roundtable described their frustrations in representing startup companies. Applications submitted by them to the U.S. Citizenship and Immigration Services (USCIS) are often subject to multiple delays, denials, and requests for further

## New Report Examines Immigrant-owned Businesses' Access to Capital

Immigrants' significant contribution to business ownership and formation is documented in a new study from the Office of Advocacy. *Immigrant Entrepreneurs and Small Business Owners, and their Access to Financial Capital*, by Robert W. Fairlie, found that 10 percent of immigrants own a business. Nearly 20 percent of immigrant-owned businesses started with \$50,000 or more in startup capital, compared to 15.9 percent for non-immigrant-owned business. The study uses data from the 2007 U.S. Survey of Business Owners and the 1996–2010 Current Population Survey.

The most common source of startup capital for immigrant-owned businesses is personal or family savings; roughly two-thirds reported using this source. Other commonly used sources are credit cards, bank loans, personal or family assets, and home equity loans. Overall, the sources of startup capital used by immigrant- and non-immigrant-owned firms do not differ substantially.

Visit [www.sba.gov/advocacy/7540/141841](http://www.sba.gov/advocacy/7540/141841) for the entire report.

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## Advocacy Welcomes Regulatory Economist Christine Kymn

by Rebecca Krafft, Editor

In April, the Office of Advocacy welcomed Christine Kymn to the staff as a regulatory economist. Kymn's credentials uniquely suit her for Advocacy's work. Most recently, Kymn served as a policy analyst at the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA). There she specialized in environmental air, toxic chemical, and energy regulations, analyzing estimated costs and benefits. She participated in small business advocacy review panels for certain environmental regulations.

Kymn received her Ph.D. in economics from George Mason University in January 2006 and her law degree from George Mason's School of Law in May 2006. She

was the recipient of the Robert A. Levy Fellowship in Law and Liberty, an interdisciplinary post-graduate program that brings the "tools of economics or other social sciences to legal problems." This background is excellent preparation for the role of regulatory economist—evaluating the economic impact of proposed regulations on small businesses.

Kymn is also a teacher; she taught economics at Washington and Lee University and was a visiting professor for a year at George Mason University. Her research has focused on the intersection of law and economics, and her fields of expertise include law and economics, public choice, and public economics.



### Immigrant Entrepreneurs, *from page 4.*

evidence. Government adjudicators appear to be unfamiliar with the novel ways in which high tech businesses operate, contributing to the repeated denials. Startup founders have unconventional educational backgrounds and must complete a wide range of job duties due to the size of their operations (including answering the phones). Business owners feel they are being subjected to one-size-fits-all regulations to evaluate the legitimacy of their startup companies, when these companies are different in scale, funding, communication styles, and even the type of facilities they use.

In an initial effort to address the problem, USCIS launched the Entrepreneurs in Residence initiative to streamline existing visa pathways for immigrant entrepreneurs. In May, the Department of Homeland Security announced an expanded list of advanced science degrees that qualify foreign-born

students to stay longer in the U.S. for relevant work training. Advocacy is also working closely with USCIS to bring current governmental practices into step with business as it's now being done.

For example, Advocacy staff visited the Hub, a San Francisco work-site housed in a two-story building. The Hub is a startup incubator with over 1,000 members, all entrepreneurs, who rent the work areas and meeting rooms, attend events, and network with each other within the facility. And they all seem to be on a first-name basis with the founder of Facebook.

The roundtable participants and others we visited very much appreciated Advocacy's efforts to get to know them and to witness their businesses in action first hand. It's hard to say whether Advocacy staff was more impressed by the nontraditional settings and work styles, or by the dynamism and enthusiasm of the many visionary entrepreneurs we met on the visit.

### Testimony, *from page 2.*

Winslow Sargeant to Dr. Ruth Lunn, director of the Office of the Report on Carcinogens (RoC) within the NTP and NIEHS. The letter conveyed small businesses' concerns with the RoC process.

Maresca's testimony focused on the need to improve the peer review and the public comment processes behind the RoC. Such input is needed to ensure that substances are not inaccurately listed as "reasonably anticipated to be a human carcinogen" or "known to be a human carcinogen" in the RoC due to potentially incomplete or inaccurate scientific information. Incorrect designations could lead to unnecessary substantial adverse economic impacts for small businesses that use the substance, including increased costs of insurance and worker's compensation premiums.

Advocacy looks forward to working with small businesses and NTP to help improve the RoC.

### The Entrepreneurial Ecosystem: Think Biology 101

by Caitlin Cain, Region VI Advocate

An “entrepreneurial ecosystem” is more than a buzzword, it’s the coordination of like-minded entities, individuals, or institutions to form a network to help create, grow, and sustain business development. Understanding and sustaining the ecosystem is critical for the long-term viability of both businesses and the broader community.

“An *entrepreneurial ecosystem*? Reminds me of biology class,” one my colleagues commented.

Well, yes, that’s a great comparison. And like biology, we should not isolate individual parts, but consider how the individual components relate to the broader system. Sticking with the biology analogy, we wouldn’t try to prevent a heart attack by simply taking aspirin, right? We would instead assess our overall lifestyle patterns, making necessary adjustments to our diet, stress levels, exercise routine, etc. Cultivating a business environment is no different—you are assessing and strengthening a system, loosely characterized by accessibility to mentors, knowledge centers, like-minded partners (leadership), capital, workforce (talent), and the desirability of the city, town, or place in which you operate.

Over the last few years I have had the opportunity to both practice and study ecosystem formation in rural and urban areas. What I discovered is that some cities have utilized entrepreneurship as a redevelopment tool. These cities created an entrepreneurial movement by coupling engaged entrepreneurs with implementation-oriented entities; together they transformed their local economies.

For example, New Orleans went from being a declining urban economy to a hotbed of entrepreneurial

activity because it embraced an ecosystem approach—addressing such things as place-based development, public/private partnerships, and access to capital. The city connected all the dots under the banner of entrepreneurship.

In fact, entrepreneurial thinking is slowly becoming part of the local culture and workforce. The work of organizations like IDEA Village has been pivotal. And more recently, Tulane University has taken big strides in creating a multidisciplinary entrepreneurial curriculum that focuses on the triple bottom line, accounting for companies’ social, economic, and environmental impact. Tulane graduates now include entrepreneurs who specialize in launching businesses that return profits to both the company and the local community. Entrepreneurship is slowly becoming habitual and is now celebrated annually during New Orleans Entrepreneur Week (NOEW), just like JazzFest and Mardi Gras.

New Orleans isn’t the only city that has figured out how to connect the dots. Cleveland, Boulder, St. Louis, and Philadelphia are just a few examples of cities that have reinvented themselves through entrepreneurship. In fact, I was recently invited to attend the first Business Development Week in Beaumont, Texas. I was blown away by the array of partnerships, the topics covered, the varied demographics of the participants, and the amount of energy and enthusiasm generated for entrepreneurship and for Beaumont itself during this one week. Hopefully, Beaumont will also be able to sustain the ecosystem it has only just started to foster.

Without a doubt, urban planners, economic developers, nonprofit

leaders, business executives and now policymakers are beginning to understand the interconnectedness of ecosystem networks and community growth. This sort of awareness, coupled with longer-term vision, is all the more important as we consider how these networks must constantly evolve to meet the needs of the community.

Government tools have traditionally responded to specific impediments that affect the entrepreneurial environment—addressing discrete challenges associated with a particular industry, such as access to capital, workforce, infrastructure, taxes, or other policy. But if we are to transform entrepreneurial landscapes, it will only make sense if government’s role evolves from managing individual parts to supporting the broader system. In recent efforts like Startup America, government played the role of convener, bringing together entrepreneurs, nonprofit leaders, and public/private partnerships to brainstorm solutions to sustain and accelerate small business growth. (The Office of Advocacy took part in several Startup America roundtables on reducing barriers to entry and the like.)

But what other roles can government play to evolve with the changing landscape? Tune into this discussion by following us on our blog and Twitter ([@AdvocacySBA](https://twitter.com/AdvocacySBA)). And post some of your own crazy ideas on how we can best construct entrepreneurial ecosystems.

*This article originally appeared on the Office of Advocacy’s blog, *The Small Business Watchdog*, on May 11, 2012. Visit the blog at <http://weblog.sba.gov/blog-adv>.*



## Advocacy Hosts Roundtable on “Incorporation by Reference”

by Bruce Lundegren, Assistant Chief Counsel

The Office of Advocacy hosted a small business roundtable on May 9 to discuss “Incorporation by Reference,” an important topic that is occupying the attention of several federal agencies.

Incorporation by Reference (IBR) refers to federal agencies’ practice of adopting materials, such as industry consensus standards, into their regulations by simply referencing them in the *Federal Register*. The National Technology Transfer Act Advancement Act encourages agencies to use private standards (rather than writing their own), and the Office of Management and Budget (OMB) has issued guidance in the form of OMB Circular A-119. However, the *Federal Register* is not allowed to publish IBRs unless they are “reasonably available” to affected persons.

The Administrative Conference of the United States (ACUS) recently adopted a recommendation on Incorporation by Reference, and a group of legal scholars has petitioned the Office of the Federal Register (OFR) to define what the term “reasonably available” means, including the possibility that all IBR materials should be available on the Internet for free. The problem is that many of these materials are copyrighted and the organizations that develop them sell the materials to fund their operations.



The panel at Advocacy’s Incorporation by Reference roundtable included (from left) Miriam Vincent, Office of the Federal Register; Neil Eisner, Department of Transportation; Bruce Lundegren, Office of Advocacy; Karyn Schmidt, American Chemistry Council; Jerry Rivera, National Electrical Contractors Association; Cindy Squire, National Marine Manufacturers Association.

The legal scholars who petitioned OFR believe the public should not have to pay to know what the law says, and Congress recently banned one agency from using IBR unless the materials are available for free.

In addition to the petition on cost, OMB and the National Institute of Standards and Technology have hosted workshops aimed at improving IBR practices, and OMB has asked for public input on possible revisions to Circular A-119. The comment deadline is June 1.

Attendees at Advocacy’s roundtable came from a host of industries as well as several organizations that

develop standards. While the cost of IBR materials was important, attendees were also concerned about transparency and small business participation, and several attendees stated that small businesses do not have the time or resources to effectively participate in the process.

Advocacy is closely monitoring the IBR issue and realizes that small business perspectives vary. Advocacy will remain engaged and seek to ensure that small business concerns are addressed before private standards become federal law.

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### Small Business Issues, from page 3.

Michigan and Ohio. Small businesses are again looking to drive the local economy. The public/private relationship is crucial for small businesses to innovate and grow. The small business sector, our engine of economic growth, will need to have a workforce that

is globally competitive. Making sure that we train U.S. workers for these jobs—as well as making sure the United States remains a beacon for the best and the brightest from around the world—should be priorities in this public/private partnership. Advocacy is encouraged that the U.S. Citizen and Immigration Services is looking at ways to streamline visa processes

for individuals, students, and entrepreneurs in technical fields.

Advocacy continues to bring the small business viewpoint to discussions of these issues at the highest levels of government. Significant strides at reducing barriers—supporting entrepreneurs and small businesses—continue. It is good to know that small business is being heard.

# EPA Responds to Small Business Concerns About Oil and Gas Emissions Rule

by David Rostker, Assistant Chief Counsel

In April, the Environmental Protection Agency (EPA) released its final rulemaking setting air emission standards for oil and gas production. This rule revises existing standards covering drilling operations, including hydraulic fracturing (fracking), and expands the operations covered by these rules to include hydraulic fracturing of gas wells, pneumatic controllers, compressors, and storage tanks.

Although small entities continue to have significant concerns about their ability to comply with the rule, EPA made some important changes between the proposed and final rules. The most prominent requirement for natural gas drilling operations is for “reduced emissions completions” (REC), also sometimes called “green comple-

tions,” in which natural gas is extracted from fluids that “flow back” out of the well for the days following hydraulic fracturing. The process, developed and effectively used in the field, results in saleable natural gas, offsetting the cost of the process. However, not all wells are suitable for REC, and only a limited number of sets of REC equipment are available.

In this final rule, EPA agreed with industry that more time would be needed to implement the REC requirement and allow for more REC equipment to be built. Although small entities would have preferred a longer phase-in period, EPA changed the effective date from 60 days at proposal to approximately two and a half years. EPA also accommodated technical

and economic concerns with REC by requiring RECs only where feasible and exempting low-pressure wells. Much will depend on how the permitting authorities interpret what is “feasible” in practice, and industry is still concerned that EPA is requiring RECs where there will be few emissions benefits.

Small entities are also concerned about the impact of the reporting and recordkeeping requirements. EPA made some changes that may reduce the paperwork burden, however. These changes include revising the advance notice requirement for RECs and allowing some reporting submissions by photographs with embedded timestamps and GPS coordinates.

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