

**U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Chairman**



**Continuing Oversight of Regulatory Impediments to Job Creation: Job
Creators Still Buried by Red Tape**

**STAFF REPORT
U.S. HOUSE OF REPRESENTATIVES
112TH CONGRESS
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
JULY 19, 2012**

Summary

Rules and red tape imposed by the federal government choke economic expansion and job growth, according to job creators themselves. Despite hearing this message loud and clear, regulations implemented during the Obama Administration have moved aggressively in the opposite direction—the regulatory state continues to grow, adding billions of dollars in compliance costs to businesses and job creators. These costs will ultimately be paid by consumers.

Although Obama Administration officials frequently proclaim it has issued fewer regulations than its predecessors, analysis by the Committee on Oversight and Government Reform reaches a far different conclusion: the Obama Administration has issued far more of the most expensive group of regulations with a higher overall economic cost.

The aggressive march of the regulatory state has been the subject of an ongoing, multi-year examination by the Committee. This staff report expands on earlier Committee work and documents how the regulatory state is proliferating with dire consequences for the economy, and how federal regulations continue to impede job growth and business expansion.

From 2010 to 2011, the number of final rules issued by federal agencies rose from 3,573 to 3,807—a 6.5 percent increase. During that same time frame, the number of proposed rules that will be finalized increased 18.8 percent. The published regulatory burden for 2012 could exceed \$105 billion, according to the American Action Forum, headed by a former director of the Congressional Budget Office. Since January 1, the federal government has imposed \$56.6 billion in compliance costs and more than 114 million annual paperwork burden hours.

Beyond this “routine” rulemaking, the number of rules with significant costs is on the rise. Analysis from the Heritage Foundation indicates that the Obama Administration issued 106 new rules in its first three years that collectively cost taxpayers more than \$46 billion annually—four times the number of “major” regulations and five times the cost of rules issued in the prior administration’s first three years.

Workers and job creators confirm that the oppressive regulatory red tape environment continues to hinder improvement. A recent Gallup poll found that nearly half of small businesses are not hiring because they are worried about new government regulations. Forty-four percent of likely voters say they believe regulations from the Environmental Protection Agency (EPA) hurt the economy.

Research conducted by The Winston Group found that 53 percent of voters say federal regulations are one of the major reasons the economy is struggling; 59 percent think that cutting regulations is vital to improving the economy, and 52 percent indicate that stopping new regulations would free employers to begin hiring. According to the National Federation of Independent Business, the issue of regulation and red tape is one of the single most important problems for small businesses.

These views are held not just by poll respondents or business group members—senior Obama Administration officials have spoken out on the need to actively address regulatory impacts on job creation and economic growth.

The White House has praised the Committee for pointing out deficiencies in its approach to regulations. Office of Information and Regulatory Affairs (OIRA) Administrator Cass Sunstein said “I’m especially grateful to you Mr. Chairman and to the committee as a whole for its constructive and important work on this issue over the past months. It’s very significant to try to get regulation in a place where it’s helpful to the economic recovery.”

The OIRA Administrator has also said that expensive regulations can “increase prices, reduce wages, and increase unemployment (and hence poverty).”

OIRA’s 2012 Draft Report to Congress on Federal Regulations concedes that “regulations...can place undue burdens on companies, consumers, and workers, and may cause growth and overall productivity to slow.” It also notes that “evidence suggests that domestic environmental regulation has led some U.S. based multinationals to invest in other nations (especially in the domain of manufacturing), and in that sense, such regulation may have an adverse effect on domestic growth.”

Finally, OIRA agrees that “regulations can also impose significant costs on businesses, potentially damaging economic competition and capital investment,” if not carefully designed.

This staff report examines three types of regulations (energy and environmental, labor, and financial services), and looks at both current and new/proposed rules, their costs and impacts on job creators. It concludes that until the government addresses the overwhelming cost, scope and impact of the ever-expanding regulatory state, it is not in a position to aid job creators and spur economic recovery. Moreover, the staff report suggests that until these regulations are addressed, high unemployment and slow economic growth will persist.

Key Findings

- From 2010 to 2011, the number of final rules issued by federal agencies rose from 3,573 to 3,807—a 6.5 percent increase. During that same time frame, the number of proposed rules increased 18.8 percent.
- The published regulatory burden for 2012 could exceed \$105 billion, according to the American Action Forum, headed by a former director of the Congressional Budget Office.
- Analysis from the Heritage Foundation indicates that that Obama Administration issued 106 new rules in its first three years that collectively cost taxpayers more than \$46 billion annually—four times the number of “major” regulations and five times the cost of rules issued in the prior administration’s first three years.
- In the past decade, the number of economically significant rules in the pipeline—those that could cost \$100 million or more annually—has increased by more than 137 percent.

- Over 40 EPA regulations cited by job creators as barriers to growth and expansion in the Committee’s February 2011 staff report remain a problem.
- The Boiler Maximum Achievable Control Technology (MACT) rule proposed in 2010 will cost job creators up to \$15 billion in regulatory compliance costs. A similar “Utility” MACT rule would cost providers \$9.6 billion annually and result in the shutdown of 25 percent of U.S. power generating units.
- EPA’s proposal to regulate coal combustion residuals (“coal ash”) usurps states’ previous role and exerts unprecedented federal control over the utility industry. More than half of the complaints received from business and industry groups expressed concern last year, while half of the complaints are new. Compliance costs range from \$78-110 billion over the next 20 years while job loss estimates range from 39,000, under a low estimate, to 316,000, under a high estimate.
- EPA’s E15 ethanol rule “places consumers and vehicle manufacturers at significant risk” but is proceeding despite these concerns. EPA estimates industry compliance at \$3.64 million per year but also notes that half of existing retail outlets are incompatible with the fuel, and would need to purchase and install new equipment.
- Proposed fuel economy standards will increase the cost of new vehicles by at least \$4000 per vehicle while delivering less than half that amount in fuel savings and could result in the loss of as many as 220,000 automotive jobs.
- Tier 3 gasoline standards proposed by EPA would impose a total economic cost of approximately \$8 billion on the industry and raise the cost of gasoline by six to nine cents per gallon for consumers.
- Rules attributed to the Dodd-Frank Act will grow from 36 implemented today to roughly 400 required under the act. Rules governing “conflict minerals” such as gold, tin, tantalum and tungsten will cost the industry \$71 million per year and impact as many as 5,000 companies. The National Association of Manufacturers estimates true compliance costs for the rule to be \$9-16 billion.
- A U.S. Chamber of Commerce/Business Roundtable survey notes that those impacted by a proposed “end user” rule effecting derivatives would have to sideline up to \$6.7 billion in working capital and cost 100,000 jobs.
- The National Labor Relations Board’s “notice posting rule” promoting unionization in the workplace will cost employers an estimated \$386.4 million and in the words of one industry organization, “could set a disturbing precedent and chill job creation.”

The Committee is publishing this staff report to tell the American people directly what job creators say is the true cost and impact of the Obama Administration’s regulatory agenda.

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I. Introduction

At the end of the 111th Congress, the House Committee on Oversight and Government Reform commenced a major effort to discover burdensome regulations negatively affecting job growth and the economy. The Committee launched AmericanJobCreators.com and received information from job creators and business groups, which it has used to inform its efforts. As a result, the Committee issued two staff reports—*Assessing Regulatory Impediments to Job Creation*¹ and *Broken Government: How the Administrative State has Broken President Obama’s Promise of Regulatory Reform*,²—held ten full committee hearings, nearly 20 subcommittee hearings, sent a host of letters to agencies inquiring about their regulatory policies, and passed three regulatory reform bills. President Obama’s chief regulatory officer, Office of Management and Budget Office of Information and Regulatory Affairs (OIRA) Administrator Cass Sunstein, has called the Committee’s work on this subject “constructive” and “important.”³ Moreover, the Committee’s work has yielded gains and achieved some regulatory relief.

However, the economy continues to struggle as job growth remains stagnant, small businesses continue to be hesitant to hire, and regulations rise. Therefore, in May 2012, the Committee renewed its efforts to examine burdensome and job-stifling regulations by repeating its request to job creators and business organizations.⁴

a. Some Progress in Moderating New Regulatory Burdens

Pressure from Congress and job creators has resulted in some improvements to the burdensome regulatory state. In January 2011, President Obama issued Executive Order 13563, “Improving Regulation and Regulatory Review,” to reaffirm existing cost-benefit principles and launch a “look-back” analyses of existing rules.⁵ Subsequently, in July 2011, President Obama issued Executive Order 13579, “Regulation and Independent Regulatory Agencies,” recommending that independent regulatory agencies also conduct look-back analyses and comply with the requirements of Executive Order 13563.⁶ In May 2012, President Obama issued Executive Order 13610, “Identifying and Reducing Regulatory Burdens,” to promote public participation in retrospective reviews and to order agencies to provide regular status reports to OIRA on these efforts.⁷

¹ H. Comm. on Oversight & Gov’t Reform Preliminary Staff Report, *Assessing Regulatory Impediments to Job Creation*, 112th Cong. (2011) available at http://oversight.house.gov/wp-content/uploads/2012/02/Preliminary_Staff_Report__Regulatory_Impediments_to_Job_Creation.pdf.

² H. Comm. on Oversight & Gov’t Reform Staff Report, *Broken Government: How the Administrative State has Broken President Obama’s Promise of Regulatory Reform*, 112th Cong. (2011) available at http://oversight.house.gov/wp-content/uploads/2012/01/9.13.11_Broken_Government_Report1.pdf.

³ “*How a Broken Process Leads to Flawed Regulations*”: *Hearing Before the H. Comm. on Oversight & Gov’t Reform*, 112th Cong. (2011) (testimony of Cass Sunstein, Administrator, Office of Information and Regulatory Affairs).

⁴ See Letter from Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Govt. Reform to Stephen Ubl, Advanced Medical Technology Association, May 16, 2012.

⁵ Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (Jan. 18, 2011).

⁶ Exec. Order No. 13,579, 76 Fed. Reg. 41,587 (July 11, 2011).

⁷ Exec. Order No. 13,610, 77 Fed. Reg. 28,469 (May 10, 2012).

Also, in response to outside pressure, the Obama Administration reversed course on some regulatory actions that would have stifled economic growth. In January 2011, the Occupational Safety and Health Administration (OSHA) withdrew a proposal to alter workplace noise standards because the proposal would have unnecessarily required employers to purchase costly administrative or engineering controls.⁸ The Committee's preliminary staff report, *Assessing Regulatory Impediments to Job Creation*,⁹ documented a significant outcry from 30 business groups speaking out against this proposal. Also, in January 2011, OSHA temporarily withdrew a proposed rule to require businesses to record work-related musculoskeletal disorders (MSDs), which would have saddled employers with onerous and unnecessary reporting requirements.¹⁰ However, this reprieve was short lived. Despite continued concern from many segments of the business community, OSHA reopened the public comment period in May 2011, with hopes of finalizing the rule.¹¹

In another victory for job creators, the White House rejected an Environmental Protection Agency (EPA) draft final rule regarding ozone National Ambient Air Quality Standards on September 2, 2011. The White House agreed with the Committee and recognized that the EPA's rule would impose an oppressive burden on businesses and local governments.¹² The *New York Times* reported that this decision followed a series of meetings with industry leaders and governors of the "red" states in the Midwest and on the East Coast that would face the hardest compliance burdens of the rule.¹³

House Committee on Oversight and Government Reform hearings have also brought about regulatory victories for job creators. At a May 2011 hearing, Rep. Jason Chaffetz (R-UT) questioned a Department of the Interior (DOI) witness about the Obama Administration's recent conflicting actions on "Wild Lands" policy.¹⁴ In reaction to this pressure, the Bureau of Land Management (BLM) Director Bob Abbey and Secretary of the Interior Ken Salazar confirmed in a June 1, 2011, memo that, pursuant to the 2011 Continuing Resolution, the BLM will not designate any lands as "Wild Lands," and outlined how DOI will work in collaboration with Members of Congress, states, tribes, and local communities to identify public lands that may be appropriate candidates for protection under the Wilderness Act.¹⁵ Separately, in response to testimony from small business owners at a September 14, 2011, hearing, DOI reduced the number of species proposed to be covered by the Lacey Act, which helped to limit the impact on

⁸ News Release, U.S. Department of Labor, US Department of Labor's OSHA Withdraws Proposed Interpretation on Occupational Noise (Jan. 19, 2011) *available at*

http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=19119.

⁹ H. Comm. on Oversight & Gov't Reform Preliminary Staff Report, *Assessing Regulatory Impediments to Job Creation*, 112th Cong. (2011) *available at* <http://oversight.house.gov/wp->

¹⁰ News Release, U.S. Department of Labor, U.S. Labor Department's OSHA Temporarily Withdraws Proposed Column for Work-Related Musculoskeletal Disorders, Reaches Out to Small Businesses (Jan. 25, 2011).

¹¹ News Release, U.S. Department of Labor, U.S. Labor Department's OSHA reopens public record on proposed record-keeping rule to add work-related musculoskeletal disorders column (May 16, 2011).

¹² Press Release, White House, Statement by the President on the Ozone National Ambient Air Quality Standards (Sep. 2, 2011).

¹³ John M. Broder, *Re-election Strategy Is Tied to a Shift on Smog*, NY TIMES (Nov. 16, 2011).

¹⁴ *Pain at the Pump: Policies that Suppress Domestic Production of Oil and Gas: Hearing before H. Comm. on Oversight and Gov't Reform*, 112th Cong. (2011).

¹⁵ Press Release, U.S. Department of the Interior, Salazar Outlines Broad Opportunities for Common Ground on Wilderness (June 1, 2011).

small businesses in the reptile industry.¹⁶ Additionally, the Department of Agriculture scrapped the most controversial parts of its proposed “GIPSA rule” by issuing a final rule that was more aligned with Congressional intent.¹⁷ Finally, in December 2011, shortly after a hearing in the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending highlighting the high costs of the Department of Transportation’s (DOT) proposed Hours-of-Service rule,¹⁸ DOT altered the final rule to cut the costs nearly in half.¹⁹ This was a positive development; however, industries affected by the rule assert it remains flawed and have filed suit to challenge it.²⁰

Also in response to the efforts of this Committee, the Securities and Exchange Commission (SEC) is poised to make a very important historic change in its regulatory policy. Over the last two years, significant and inexcusable deficiencies in the SEC’s cost-benefit analysis have drawn strong criticism from the U.S. Court of Appeals for the District of Columbia Circuit,²¹ this Committee,²² the Office of Information and Regulatory Affairs,²³ stakeholders,²⁴ and scholarly commentators.²⁵ Therefore, on March 16, 2012, the SEC’s Office of the General Counsel and the Division of Risk, Strategy, and Financial Innovation circulated a memorandum entitled Current Guidance on Economic Analysis in SEC Rulemakings (“Current Guidance”).²⁶ The Current Guidance contains a set of clear procedural directives to all SEC rulewriting staff, and the Committee is hopeful the Current Guidance will help ensure proposed and final Commission rules are subjected to rigorous economic analysis. In an effort to inform SEC staff of the finality and mandatory nature of the Current Guidance, the Commission has posted the document on its website.²⁷ If implemented properly, the Current Guidance has the potential to significantly improve the process by which the SEC regulates U.S. capital markets.

Legislation has also been enacted to remedy some burdensome policies. On April 14, 2011, the President signed the Comprehensive 1099 Taxpayer Protection and Repayment of

¹⁶ News Release, U.S. Fish & Wildlife Service, Salazar Announces Ban on Importation and Interstate Transportation of Four Giant Snakes that Threaten Everglades (Jan. 17, 2012).

¹⁷ Capital Update, *New GIPSA Rule Issued*, National Pork Producers Council (Dec. 9, 2011).

¹⁸ *The Price of Uncertainty: How Much Could DOT’s Proposed Billion Dollar Service Rule Cost Consumers this Holiday Season?: Hearing before Subcomm. on Regulatory Affairs, Stimulus Oversight and Gov’t Spending of the H. Comm. on Oversight and Gov’t Reform*, 112th Cong. (2011).

¹⁹ News Release, U.S. Department of Transportation Takes Action to Ensure Truck Driver Rest Time and Improve Safety Behind the Wheel (Dec. 22, 2011).

²⁰ Trucking Info Staff, *HOS Court Battle Starts Next Month*, Truckinginfo.com (June 19, 2012).

²¹ See, e.g., *Business Roundtable v. SEC*, 647 F. 3d 1144, 1148-49 (D.C. Cir. 2011)

²² See generally *The SEC’s Aversion to Cost-Benefit Analysis: Hearing Before the Subcomm. on TARP, Financial Services and Bailouts of Public and Private Programs of the H. Comm. on Oversight and Gov’t Reform*, 112th Cong. (2012) [hereinafter *Hearing I*].

²³ Memorandum from Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, July 22, 2011.

²⁴ Exec. Order No. 13,563, 76 Fed. Reg. 3,821 (Jan. 21, 2011).

²⁵ See, e.g., *Hearing I*, *supra* note 2 (statements of Dr. Henry Manne, Dean Emeritus, George Mason University School of Law, and J.W. Verrett, Assistant Professor, George Mason University School of Law).

²⁶ Memorandum from RSFI and OGC to Staff of the Rulewriting Divisions and Offices (Mar. 16, 2012), available at http://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf.

²⁷ *Id.*

Exchange Subsidy Overpayments Act of 2011,²⁸ repealing the Patient Protection and Affordable Care Act provision that expanded Form 1099 information reporting requirements for payments of \$600 or more to corporations. A number of trade associations representing a wide range of industries reported this looming rule as a concern in the Committee’s preliminary staff report.²⁹ Moreover, on November 21, 2011, Obama signed into law the 3 Percent Withholding Repeal and Job Creation Act.³⁰ The law permanently repeals the requirement that federal, state, and large local governments begin withholding three percent of each payment of \$10,000 or more to a contractor after January 1, 2013, which was also a substantial concern to groups as discussed in the Committee’s preliminary staff report.

Unfortunately, the Obama Administration has not rolled back all of its problematic rules on its own volition. Indeed, the judicial branch has taken an active role revoking or delaying overreaching regulations and agency actions. On March 23, 2011, the U.S. District Court for the District of Columbia overturned an EPA decision to revoke a mining permit in West Virginia because the court found EPA’s action was “contrary to the language, structure, and legislative history of section 404 [of the Clean Water Act].”³¹ On July 23, 2011, the U.S. Court of Appeals for the District of Columbia tossed out the Securities and Exchange Commission’s (SEC) proxy access rule, ruling that the SEC did not adequately consider the rule’s effect on companies.³² Additionally, on September 6, 2011, the SEC announced that it would not seek a rehearing or Supreme Court review and would study the appeals court decision before pursuing another version of the rule.³³ On April 13, 2012, the U.S. District Court for the District of Columbia delayed implementation of a notice posting rule because the U.S. District Court for the District of South Carolina found the National Labor Relations Board (NLRB) “lack[ed] authority . . . to promulgate the rule.”³⁴ However, an earlier federal court decision ruled in favor of the NLRB. Because appeals are pending to resolve the jurisdictional split, the fate of the rule remains uncertain.³⁵ Finally, on May 14, 2012, the U.S. District Court for the District of Columbia invalidated a NLRB rule intended to speed up union elections on the basis that the NLRB lacked the quorum required under the National Labor Relations Act when it issued the rule.³⁶ The fate of this rule is also uncertain as the NLRB could reissue it with a quorum.

²⁸ H.R. 4--112th Congress: Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011. (2011). In GovTrack.us (database of federal legislation). Retrieved June 20, 2012, from <http://www.govtrack.us/congress/bills/112/hr4>

²⁹ H. Comm. on Oversight & Gov’t Reform Preliminary Staff Report, *Assessing Regulatory Impediments to Job Creation*, 112th Cong. (2011) available at http://oversight.house.gov/wp-content/uploads/2012/02/Preliminary_Staff_Report_Regulatory_Impediments_to_Job_Creation.pdf.

³⁰ H.R. 674--112th Congress: 3% Withholding Repeal and Job Creation Act. (2011). In GovTrack.us (database of federal legislation). Retrieved June 20, 2012, from <http://www.govtrack.us/congress/bills/112/hr674>

³¹ Alan Kovski, *Federal Court Strikes Down EPA Decision To Retroactively Veto Dredge-and-Fill Permit*, BNA (Mar. 26, 2012) available at <http://www.bna.com/federal-court-strikes-n12884908597/>.

³² *Business Roundtable and Chamber of Commerce of the United States v. SEC*, No. 10-1305 (D.C. Cir. July 22, 2011).

³³ Press Release, U.S. Securities and Exchange Commission, Statement by SEC Chairman Mary L. Schapiro on Proxy Access Litigation (Sep. 6, 2011).

³⁴ *Chamber of Commerce of the United States and South Carolina Chamber of Commerce v. National Labor Relations Board*, Order, No. 2: 11-cv-02516-DCN (S.C. Dist. Ct. Apr. 13, 2012).

³⁵ Andrew Harris and William McQuillen, *NLRB Union Poster Rule Delayed While Challenge Proceeds*, BLOOMBERG NEWS (April 18, 2012).

³⁶ *Chamber of Commerce of the United States and Coalition for a Democratic Workplace v. National Labor Relations Board*, Memorandum Opinion, No. 11-2262 (JEB) (D.C. Dist. Ct. May 14, 2012).

b. Regulations Continue to Plague the Economy

Notwithstanding the aforementioned positive developments, burdensome federal regulations continue to drag down our economy. The national unemployment rate currently stands at a staggering 8.2 percent,³⁷ and the regulatory environment continues to hinder its improvement. Indeed, a recent Gallup poll found that nearly half of small businesses are not hiring because they are “worried about new government regulations,”³⁸ and 44 percent of likely voters believe EPA regulations and actions hurt the economy.³⁹ According to the National Federation of Independent Business, “regulations and red tape” is one of the “single most important problem[s]” for small business.⁴⁰ Moreover, 53 percent of registered voters say “federal regulations are one of the major reasons the economy is struggling,” 59 percent think that cutting regulations is vital to improving the economy, and 52 percent believe that stopping new government regulations would “free employers to begin hiring,”⁴¹

Even the Obama Administration concedes that regulations can negatively affect job creation and investment. OIRA Administrator Sunstein has said that expensive regulations can “increase prices, reduce wages, and increase unemployment (and hence poverty).”⁴² OIRA’s 2012 Draft Report to Congress on Federal Regulations concedes that “regulations . . . can place undue burdens on companies, consumers, and workers, and may cause growth and overall productivity to slow.”⁴³ In the draft report, OIRA also admits that “evidence suggests that domestic environmental regulation has led some U.S. based multinationals to invest in other nations (especially in the domain of manufacturing), and in that sense, such regulation may have an adverse effect on domestic growth.”⁴⁴ Finally, OIRA agrees that “regulations can also impose significant costs on businesses, potentially damaging economic competition and capital investment,” if not carefully designed.⁴⁵

Despite acknowledgement that regulations can impede the economy, the federal regulatory state under the Obama Administration continues to grow. From 2010 to 2011, the number of final rules issued by federal agencies rose from 3,573 to 3,807—a 6.5 percent

³⁷ U.S. Dept. of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, date extracted July 9, 2012.

³⁸ Dennis Jacobe, Health Costs, Gov’t Regulations Curb Small Business Hiring, Gallup, Feb. 15, 2012 *available at* <http://www.gallup.com/poll/152654/health-costs-gov-regulations-curb-small-business-hiring.aspx>.

³⁹ 44% Think EPA Actions Hurt The Economy, Rasmussen Reports, Apr. 10, 2012 *available at* http://www.rasmussenreports.com/public_content/politics/current_events/environment_energy/44_think_epa_actions_hurt_the_economy.

⁴⁰ William C. Dunkelberg and Holly Wade, NFIB Small Business Economic Trends, NFIB Research Foundation (June 2012).

⁴¹ Jake Sherman and Seung Min Kim, *Dems face month of perilous votes*, Politico (July 8, 2012).

⁴² Robert W. Hahn & Cass R. Sunstein, *A New Executive Order for Improving Federal Regulation? Deeper and Wider Cost-Benefit Analysis*, 150 U. PA. L. REV. 1489 (2002).

⁴³ U.S. Office of Mgmt. & Budget, Office of Information and Regulatory Affairs, *Draft 2012 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities* (March 2012).

⁴⁴ *Id.*

⁴⁵ *Id.*

increase.⁴⁶ During the same time frame, the number of proposed rules increased 18.8 percent.⁴⁷ According to the American Action Forum, headed by a former director of the Congressional Budget Office, the published regulatory burden for 2012 could exceed \$105 billion.⁴⁸ Moreover, since the beginning of 2012, the federal government has imposed \$56.6 billion in compliance costs and more than 114 million annual paperwork burden hours.⁴⁹

The most costly rules are also on the rise. The Heritage Foundation found that the Obama Administration issued 106 new major rules in its first three years that collectively cost taxpayers more than \$46 billion annually.⁵⁰ To compare, this is nearly four times the *number* of major regulations and more than five times the *cost* of major rules issued by the George W. Bush Administration during its first three years.⁵¹ In the past decade, the number of economically significant rules in the pipeline—those that could cost \$100 million or more annually—has increased by more than 137 percent, rising from 56 in the spring of 2001 to 133 in the fall of 2011.⁵² Accordingly, claims by the Obama Administration that it has issued fewer regulations than the George W. Bush Administration are clearly misleading.⁵³ While the Obama Administration may have issued fewer total regulations, they have issued far more of the most expensive regulations at a higher cost.

In September 2011, President Obama declared that “we should have no more regulation than the health, safety and security of the American people require.”⁵⁴ Yet, this staff report outlines many rules that arguably have no bearing on the health, safety, or security of the American people. Instead, they are gifts to the President’s environmental and union allies.

To the detriment of job creators, the President may be under the impression that he has achieved his regulatory goals since he recently declared “the private sector is doing fine.”⁵⁵ Yet, the input the Committee received gives no such indication. As the Non-Ferrous Founders’ Society (NFFS) observed:

[T]he more things change in Washington, the more they stay the same. Several of the rules that NFFS and other industry groups took issue with in January of 2011 were withdrawn, only later to be re-proposed, reintroduced, or remanded for further consideration. Others continue to languish in legislative limbo pending the incorporation of and/or response to stakeholder comments, or awaiting additional cost or regulatory

⁴⁶ Wayne Crews, *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State*, Competitive Enterprise Institute (2012).

⁴⁷ *Id.*

⁴⁸ Sam Batkins, *The Week in Regulation: July 9-13*, American Action Forum, July 16, 2012, available at <http://americanactionforum.org/topic/week-regulation-july-9-13>.

⁴⁹ *Id.*

⁵⁰ James Gattuso and Diane Katz, *Red Tap Rising: Obama-Era Regulation at the Three-Year Mark*, The Heritage Foundation (Mar. 13, 2012).

⁵¹ *Id.*

⁵² *Id.*

⁵³ See Josh Hicks, *Who has the better regulatory record—Obama or Bush?*, The Washington Post, Mar. 27, 2012.

⁵⁴ Office of the Press Secretary, The White House, *Address by the President to a Joint Session of Congress* (Sept. 2011).

⁵⁵ Devin Dwyer, *Obama Says 'Private Sector Doing Fine,' Calls for Aid to States*, ABC News (June 8, 2012).

impact analyses. ... Meanwhile, a plethora of new rules and regulations from agencies all across the government have been proposed.⁵⁶

As this staff report documents, a host of other business groups echo NFFS's sentiment that the regulatory state is out of control and that federal government regulations continue to negatively affect job growth and the economy. According to the Associated Builders and Contractors, "the administration's efforts to address overregulation have largely failed to offer tangible relief to construction business owners."⁵⁷ As previously stated, not only do many of the regulations identified in the Committee's preliminary staff report remain a problem, this staff report identifies additional problematic regulations.

II. Regulations That Remain Problematic for Job Creators

This section discusses several regulations that were identified in the Committee's February 2011 preliminary staff report, which remain a concern to multiple organizations. While the focus is on energy, environmental, labor, and financial services regulations, many other regulations previously brought to the Committee's attention also remain a concern. The attached appendix identifies all the regulations and policies that job creators continue to believe are problematic.

a. Energy and Environmental Regulations

Similar to the Committee's preliminary staff report, respondents overwhelmingly identified the EPA as the agency imposing the heaviest regulatory burden. Over 40 EPA regulations that were a problem for job creators in February 2011 remain a problem. In particular, Boiler Maximum Achievable Control Technology (MACT), numeric water quality standards, Coal Combustion Residuals, the E15 ethanol rule, fuel economy standards, greenhouse gas regulations, the Lead Renovation, Repair and Painting rule, National Ambient Air Quality Standards (NAAQS) for particulate matter, and Utility MACT received the most complaints. The following section provides an update on the status of these rules.

i. EPA Boiler MACT

Job creators continue to identify EPA's Boiler MACT regulation as a significant threat to both existing jobs and job creation. EPA proposed the rule in June 2010, issued a final rule in March 2011, and on the same day, in an unprecedented action, also issued a notice of reconsideration.⁵⁸ On May 18, 2012, EPA submitted a revised rule to the Office of Management

⁵⁶ Letter from James L. Mallory, Executive Director, Non-Ferrous Founders' Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov't Reform, June 1, 2012 (on file with author).

⁵⁷ Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).

⁵⁸ Environmental Protection Agency, Emissions Standards for Boilers and Process Heaters and Commercial / Industrial Solid Waste Incinerators, Regulatory Actions, *available at* <http://epa.gov/airquality/combustion/actions.html>.

and Budget signaling that the reconsidered rule should be finalized within 90 days.⁵⁹ According to EPA, the agency will not enforce a new Boiler MACT standard until the revised rule is finalized.

While industry groups acknowledge that EPA has made Boiler MACT less stringent than the final rule published in March 2011, the costs and burdens of the reconsidered rule are still substantial. According to a study performed by the Council of Industrial Boiler Owners (CIBO), job creators will be on the hook for up to \$15 billion in regulatory compliance costs under the reconsidered rule.⁶⁰ The Anthracite Region Independent Power Producers Association (ARIPPA), the trade association that represents electric generating plants that use stockpiled coal refuse, sees Boiler MACT as a clear threat to existing jobs, stating, “the emission standards identified in the proposed Boiler MACT rule are not reflective of achievable emissions for ARIPPA plants.”⁶¹ Furthermore, CF Industries informed the Committee that “the primary concern with the rule . . . is the proposed timetable for boiler inspections, which would interrupt established inspection schedules, leading to extended production outages.”⁶² Accordingly, Boiler MACT continues to be a rule whose uncertainty and high cost cause concerns amongst job creators.

ii. EPA Numeric Water Quality Standards: Chesapeake Bay Total Maximum Daily Load (TMDL) and Florida Numeric Nutrient Criteria

In late 2010, the EPA established the Chesapeake Bay Total Maximum Daily Load (TMDL) ostensibly to restore clean water to the Bay and surrounding waters.⁶³ The TMDL, which is required under the Clean Water Act, sets forth pollution limits for nitrogen, phosphorous, and sediment across Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia and the District of Columbia.⁶⁴ It specifically requires a 25 percent reduction in nitrogen, a 24 percent reduction in phosphorus, and a 20 percent reduction in sediment.⁶⁵

Similarly, the EPA has begun to impose federal numeric nutrient water quality standards for the state of Florida – one rule for inland water bodies, published December 6, 2010, and one for estuaries, coastal waters, and flowing waters, scheduled to be proposed in July 2012.⁶⁶ These

⁵⁹ Jeremy P. Jacobs, *EPA Sends Boiler Rules to White House*, Greenwire, May 18, 2012 available at <http://www.eenews.net/Greenwire/2012/05/18/archive/3?terms=boiler+mact>.

⁶⁰ Letter from Jay Timmons, President and CEO, National Association of Manufacturers to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t Reform, June 4, 2012 (on file with author).

⁶¹ Letter from Jeff McNelly, Executive Director, ARIPPA to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t Reform, May 31, 2012 (on file with author).

⁶² Letter from Stephen R. Wilson, Chairman & CEO, CF Industries to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t Reform, June 15, 2012 (on file with author).

⁶³ U.S. Environmental Protection Agency, Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorous and Sediment (Dec. 29, 2010), available at http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/FinalBayTMDL/CBayFinalTMDLExecSumSection1through3_final.pdf.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ U.S. Environmental Protection Agency, Federal Water Quality Standards for the State of Florida (last updated June 8, 2012), available at http://water.epa.gov/lawsregs/rulesregs/florida_index.cfm.

standards are pursuant to a consent decree entered into with the Florida Wildlife Federation (FWF) to settle a 2008 lawsuit in which FWF argued that the State's own narrative water quality standards were insufficient and that EPA, therefore, had an obligation to promulgate standards itself.⁶⁷ The Florida Department of Environmental Protection (FDEP) has since petitioned the EPA to withdraw its rulemakings, as well as proposed to undertake its own rulemaking for nutrient criteria for state waters,⁶⁸ which it formally submitted for EPA approval on June 13, 2012.⁶⁹

The Committee received a number of responses voicing concerns about these new water quality criteria, both in the Chesapeake Bay region and the extension of those efforts in states like Florida. With respect to the Chesapeake Bay TMDL, both the Fertilizer Institute (TFI) and the Agricultural Retailers Association (ARA) are fundamentally concerned that the model upon which the nutrient water quality standards is built is inaccurate and significantly flawed.⁷⁰ As a result, EPA has adopted unachievable goals, set "impossibly high expectations" for water quality in the region, and overlooked the "real cost of achieving the goals it has set."⁷¹ Moreover, respondents argued that the process by which these criteria were arrived at usurped state authority, lacked transparency and a meaningful public review.⁷² As TFI pointed out, EPA's substitution of federal water quality standards for state standards usurps states' authority to regulate the waters within their own borders.⁷³

Aside from the procedural issues, respondents are also apprehensive of the negative impact the TMDL standards will have on the area's residents, communities, and economy. Responsible Industry for a Sound Environment (RISE) asserts that "the TMDL has the potential to arbitrarily take away people's ability to maintain their home property values and surroundings through unnecessary restrictions on pesticide and fertilizer products."⁷⁴ Data show that these restrictions will not even be meaningful to Bay restoration efforts.⁷⁵ In addition to making farming economically unviable for local farmers,⁷⁶ the TMDL "will have a significant economic

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Letter from Thomas M. Beason, General Counsel, Florida Department of Environmental Protection, to Gwendolyn Keyes Fleming, Region 4 Administrator, Environmental Protection Agency (June 13, 2012), *available at* http://www.dep.state.fl.us/water/wqssp/docs/cert_ltr_epa_numeric_nutrient_standards-0612.pdf.

⁷⁰ Letter from Ford B. West, President, The Fertilizer Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 5, 2012) (on file with author); Letter from Darren Coppock, President and CEO, Agricultural Retailers Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 7, 2012) (on file with author).

⁷¹ Letter from Darren Coppock, President and CEO, Agricultural Retailers Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform 8 (June 7, 2012) (on file with author).

⁷² *Id.*; Letter from Aaron Hobbs, President, Responsible Industry for a Sound Environment, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with author); Letter from Ford B. West, President, The Fertilizer Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 5, 2012) (on file with author).

⁷³ Letter from Ford B. West, President, The Fertilizer Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 5, 2012) (on file with author).

⁷⁴ Letter from Aaron Hobbs, President, Responsible Industry for a Sound Environment, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform 4 (June 1, 2012) (on file with author).

⁷⁵ *Id.*

⁷⁶ Letter from Ford B. West, President, The Fertilizer Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 5, 2012) (on file with author).

impact on the numerous lawn and landscape companies . . . in the region, golf courses that need products to maintain playing surfaces, and homeowners whose property values will suffer....”⁷⁷ The TMDL will also result in major costs to state and local governments, which will likely be passed on to the individual taxpayer.⁷⁸

EPA’s Numeric Nutrient Criteria (NNC) for the state of Florida will also have harmful consequences. TFI maintains that EPA’s NNC “will severely impact the ability of Florida’s phosphate fertilizer mining and production facilities to obtain and/or renew stormwater and wastewater permits[,] which could lead to reduced availability of critical nutrient inputs for America’s farmers. In addition, the rule will force agricultural stakeholders to take measures beyond reasonable and economically viable levels.”⁷⁹ Florida has recently taken measures to develop and ratify its own State-derived water quality standards, which TFI urges EPA to adopt.⁸⁰

iii. EPA Coal Combustion Residuals

EPA is expected to finalize a proposed rule to regulate coal combustion residuals (CCRs), often referred to as “coal ash,” by the end of this year.⁸¹ Broached by the EPA in June 2010, the finalized rule will usurp the states’ previous role and exert unprecedented federal control over the utility industry’s handling of CCRs through the Resource Conservation and Recovery Act (RCRA). For the past two years, EPA has considered whether to re-classify CCRs as a hazardous material under subtitle C of RCRA, or alternatively, as a nonhazardous solid waste with specific restrictions on the disposal of CCRs under subtitle D of RCRA.⁸²

Both classifications have initiated widespread industry concern regarding the production and commercial value of CCRs with 20 organizations reporting the issue as a priority to the Committee.⁸³ In this year’s staff report, more than half of the complaints received were from organizations that expressed concern about the CCR regulation last year, while half of the complaints are new.⁸⁴

At the crux of EPA’s proposal, coal-fired power plants will be forced to adjust core operations or switch to alternatives fuels. Adjusting operations is an expensive avenue likely to result in power plant closures. The Utility Solid Waste Activities Group (USWAG) estimated the subtitle C option will cost the utility industry’s ash management as much as \$78 billion to \$110 billion over the next 20 years.⁸⁵ Even under subtitle D classification, the USWAG

⁷⁷ Letter from Aaron Hobbs, President, Responsible Industry for a Sound Environment, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 1, 2012) (on file with author).

⁷⁸ Letter from Ford B. West, President, The Fertilizer Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 5, 2012) (on file with author).

⁷⁹ Letter from Ford B. West, President, The Fertilizer Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform 2 (June 5, 2012) (on file with author).

⁸⁰ *Id.*

⁸¹ 75 Fed. Reg. 35127 (proposed June 21, 2010) (to be codified at 40 C.F.R. pt. 257, 261, 264 et al.).

⁸² *Id.*

⁸³ See Appendix I.

⁸⁴ *Id.*

⁸⁵ Letter from Thomas R. Kuhn, President, Edison Electric Institute, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, 2-3 (June 1, 2012) (on file with author).

estimated \$22 billion to \$34 billion in increased costs over the next 20 years. As such, it is no surprise that ARIPPA, a Pennsylvania-based association representing electric power plants, wrote to the Committee expressing that “the ash management costs would exceed the existing revenue stream of the plants resulting in the plants operating at a loss, meaning the plants would not continue to operate.”⁸⁶ ARIPPA’s concern is substantiated by another USWAG estimate that heightened costs will result in net job losses of 39,000 to 64,700 jobs under subtitle D, or even worse – 183,900 to 316,000 utility sector jobs under subtitle C.⁸⁷

Switching to alternative fuels, however, will restrain a lucrative market for the use of CCRs in products such as cement, drywall, soil conditioners, and even carpet. Indeed, the Carpet and Rug Institute noted that “coal fly ash is used in carpet backing for several beneficial uses [and] stricter regulation of coal combustion byproducts will increase manufacturing costs, provide a lesser degree of protection to public health and the environment and potentially sacrifice important jobs.”⁸⁸ Moreover, the transportation sector emphasized that “every element of the transportation construction process, from the suppliers of concrete to the contractors who handle construction materials would be affected by the stigma of a “hazardous waste” label for coal ash.”⁸⁹ Specifically, an American Road and Transportation Builders’ Association (ARTBA) study found that the nation’s transportation infrastructure would suffer an annual \$5.23 billion increase in direct costs to build roads, runways and bridges.⁹⁰ Over the next 20 years, the ARTBA projects this increase would mount to over \$104.6 billion in additional transportation costs.⁹¹ Such heightened production costs will only get passed onto consumers through higher prices and the loss of jobs.

It is also believed that EPA’s promulgation of this discretionary rulemaking was unnecessary. On at least four previous occasions the EPA determined that CCRs did not warrant re-classification as a hazardous waste.⁹² In addition, 30 years of scientific study, including that of the National Academy of Sciences, has concluded there is no basis for the hazardous waste designation.⁹³ Thus, with no new scientific studies on CCRs and widespread industry concern, now does not seem the time for the Administration to finalize the proposed rule.

⁸⁶ Letter from Jeff A. McNelly, Executive Director, ARIPPA, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, 4 (May 31, 2012) (on file with author).

⁸⁷ Letter from Thomas R. Kuhn, President, Edison Electric Institute, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, 2-3 (June 1, 2012) (on file with author).

⁸⁸ Letter from Werner Braun, President, Carpet & Rug Institute, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, 3-4 (June 8, 2012) (on file with author).

⁸⁹ Letter from T. Peter Ruane, President & Chief Executive Officer, American Road & Transportation Builders Association, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, 11-13 (June 1, 2012) (on file with author).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Letter from Thomas R. Kuhn, President, Edison Electric Institute, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, 2-3 (June 1, 2012) (on file with author).

⁹³ *Id.*

iv. EPA E15 Ethanol Rule

On June 15, 2012, EPA authorized the first set of companies to begin introducing E15 into the marketplace.⁹⁴ This rulemaking signified EPA's final step in the implementation of two partial waivers that increased the amount of ethanol in gasoline from 10 percent (E10) to 15 percent (E15) for model year (MY) 2001 and newer light-duty motor vehicles.⁹⁵ During the past two years, over a dozen industry organizations submitted letters to the Committee expressing grave concerns that the agency's authorization was premature.⁹⁶

At the outset, industry organizations are concerned about the E15 "partial" waivers because "this is the first time that EPA has allowed the use of a fuel that is not fully compatible with the entire existing fleet."⁹⁷ When granting the waivers, EPA excluded vehicles predating MY 2001, motorcycles, heavy-duty vehicles and non-road engines because E15 will damage those engines.⁹⁸ This exclusion has raised legal questions over EPA's compliance with Sec. 211(f)(4) of the Clean Air Act (CAA).⁹⁹ Under CAA, EPA must determine if a fuel or fuel additive will cause or contribute to the failure of *any* emission control device or system; however, EPA has conceded that E15 will cause damage to engines in vehicles manufactured before 2001.¹⁰⁰ As such, industry organizations initiated litigation against EPA.¹⁰¹ Oral arguments took place before the U.S. Court of Appeals for the D.C. Circuit on April 17, 2012; the Court's decision remains pending.¹⁰²

Aside from the legal issues, respondents believe that as a practical matter, EPA failed to conduct proper research of the effects of E15. Initially, EPA and the Department of Energy (DOE) worked with the Coordinating Research Council (CRC) to conduct a multi-year series of tests.¹⁰³ CRC had received \$40 million in federal funding for the testing, but for reasons unknown, EPA relied on a 2008 DOE study and hastily granted the waivers before the CRC was able to publish their results.¹⁰⁴ In May 2012, CRC released results from the two-year study that corroborated the industry's concern that EPA acted prematurely and should have waited for the CRC testing to conclude.¹⁰⁵ Of utmost concern, the CRC study found that E15 caused engine failure in 25 percent of the vehicles tested – representing about five million vehicles on U.S. roads.¹⁰⁶ In addition, the CRC study identified other mechanical failures in vehicles EPA

⁹⁴ EPA, *E15 (a blend of gasoline and ethanol)*, available at <http://www.epa.gov/otaq/regs/fuels/additive/e15/> (last visited July 2, 2012).

⁹⁵ 76 Fed. Reg. 4,662 (Jan. 26, 2011).

⁹⁶ See Appendix I.

⁹⁷ Letter from Charles T. Drevna, President, American Fuel & Petrochemical Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2 (June 5, 2012) (on file with author).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Letter from Thomas J. Lehner, Vice President, Gov't & Indus. Affairs, Toyota Motor North America, Inc., to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 3 (Jan. 10, 2010) (on file with author).

¹⁰² *Grocery Manufacturers Ass'n v. EPA*, No. 11-1072 (D.C. Cir. oral arguments Apr. 17, 2012).

¹⁰³ Letter from Mitch Bainwol, President & CEO, Alliance of Automobile Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2 (June 1, 2012) (on file with author).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

approved for E15 usage, including the potential loss of compression and power, diminished vehicle performance, poor fuel economy and misfires.¹⁰⁷

EPA's partial waiver will also cause confusion for consumers at the gas pump. According to the Association of Fuel and Petroleum Manufacturers, "[b]ecause E15 would theoretically be sold under the same canopy as regular gasoline, there is a high likelihood of consumer misfueling," in other words using the wrong fuel for their vehicle.¹⁰⁸ To mitigate the potential misfueling of vehicles, engines, and equipment excluded from the E15 waivers, EPA simultaneously issued a final rule in June 2011, that requires a warning label to notify consumers about the vehicles approved for E15.¹⁰⁹ This "mitigation rule," however, may not be sufficient. Specifically, the American Fuel and Petrochemical Manufacturers emphasized that, "the mitigation rule, which is nothing more than a cautionary label posted on the gasoline pump, is a woefully ineffective warning device."¹¹⁰

Some organizations contend that EPA's push for E15 "places consumers and vehicle manufacturers at significant risk."¹¹¹ According to the Association of Global Automakers, "[v]ehicle manufacturers have serious concerns about the impact of misfueling on our customers due to potential product damage, emissions increases, and safety problems, as well as the liabilities these consequences may create for auto manufacturers."¹¹² In particular, studies have shown that ethanol levels exceeding E10 may cause engine damage in vehicles and non-road engines such as chainsaws, lawnmowers, boats, and snowmobiles.¹¹³ These repairs are costly, and even the most likely repair of a cylinder head replacement will cost \$2,000 to \$4,000 for a single cylinder head engine and \$4,000 to \$8,000 for a V-type engine.¹¹⁴ As a result, automobile manufacturers, such as Toyota, have adopted policies that deny warranty coverage for issues related to the misuse of fuels exceeding ten percent ethanol volume.¹¹⁵

In addition to costly repair bills, the introduction of E15 will increase industry compliance costs that may get shifted to consumers through increased fuel prices. In particular, EPA has estimated the cost of industry compliance with the mitigation rule at \$3.64 million a year.¹¹⁶ Moreover, the American Petroleum Institute, an association representing over 500

¹⁰⁷ *Id.*

¹⁰⁸ Letter from Charles T. Drevna, President, American Fuel & Petrochemical Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2 (June 5, 2012) (on file with author).

¹⁰⁹ 76 Fed. Reg. 44,406 (July 25, 2011).

¹¹⁰ Letter from Charles T. Drevna, President, American Fuel & Petrochemical Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 3 (June 5, 2012) (on file with author).

¹¹¹ Letter from Michael J. Stanton, President & CEO, Association of Global Automakers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2 (June 5, 2012) (on file with author).

¹¹² *Id.*

¹¹³ Letter from Charles T. Drevna, President, American Fuel & Petrochemical Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 2 (June 5, 2012) (on file with author).

¹¹⁴ Letter from Mitch Bainwol, President & CEO, Alliance of Automobile Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 3 (June 1, 2012) (on file with author).

¹¹⁵ Letter from Thomas J. Lehner, Vice President, Gov't & Indus. Affairs, Toyota Motor North America, Inc., to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, 3 (Jan. 10, 2010) (on file with author).

¹¹⁶ *Regulatory Announcement: EPA Finalizes Regulations to Mitigate the Potential for Misfueling of Vehicles, Engines and Equipment with E15*, U.S. ENVIRONMENTAL PROTECTION AGENCY (June 2011), available at <http://www.epa.gov/otaq/regs/fuels/additive/e15/420f11023.pdf>.

companies involved in all aspects of the oil and natural gas industry, recently completed a review of studies on service station equipment and reported that half of the existing retail outlets are incompatible with E15.¹¹⁷ Aside from increased costs, ethanol blends have proven to burn at higher temperatures and to corrode faster, which may result in serious physical injury to persons using outdoor power equipment.¹¹⁸

v. DOT and EPA Fuel Economy Standards

On May 19, 2009, the White House announced the “Historic Agreement” between the auto manufacturers, labor unions, the State of California, the Department of Transportation (DOT), and the EPA to set fuel economy standards for MY2012–2016.¹¹⁹ On July 29, 2011, President Obama announced an agreement to set fuel economy standards for MY 2017-2025.¹²⁰ On November 16, 2011, DOT and EPA officially announced the proposed rule for MY 2017-2025 fuel economy standards.¹²¹

These higher fuel economy standards could generate significant negative impacts on consumers and job creators. If consumers do not buy the vehicles that manufacturers are forced to produce, sales will fall, production will slow, and manufacturers and dealers will be forced to eliminate jobs. According to Ward’s Automotive survey of 1,100 engineers, in order to meet these standards “most cars will have to be smaller, more expensive and less varied than they are today.”¹²² Moreover, it is unlikely “the goals can be met without sacrifices in vehicle cost, size, safety and choice.”¹²³ Indeed, the Defour Group has found vehicle cost increases associated with the proposal could depress light vehicle sales by 25 percent and result in the loss of as many as 220,000 automotive jobs.¹²⁴ According to the Center for Automotive Research (CAR), compliance with these higher standards will cost American car buyers between \$4,190 and \$6,435 per vehicle while delivering a lifetime fuel savings of only \$1,690 to \$2,693.¹²⁵

Another concern is the MY 2017-2025 standards are being issued three years ahead of schedule and without any compelling reason to act under such an accelerated timeline. Mazda is concerned about the extended period of time covered by the rules. Mazda states, “[t]he extended time frame creates a critical need for the regulations to be thoroughly re-examined, and mid-

¹¹⁷ Letter from Marty Durbin, Executive Vice President, American Petroleum Institute, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, 2 (June 6, 2012) (on file with author).

¹¹⁸ Letter from Mitch Bainwol, President & CEO, Alliance of Automobile Manufacturers, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, 3 (June 1, 2012) (on file with author).

¹¹⁹ Light-Duty Greenhouse Gas Standards and Corporate Average Fuel Economy Standards, Final Rule, 75 Fed. Reg. 25324 (May 7, 2010).

¹²⁰ Press Release, White House, *President Obama Announces Historic 54.5 mpg Fuel Efficiency Standard*, (July 29, 2011)

¹²¹ 76 Fed. Reg. 74,854 (December 1, 2011).

¹²² Peter Valdes-Dapena, *Auto engineers: Mileage rules will hurt safety*, CNNMoney, (August 3, 2011) (Available at http://money.cnn.com/2011/08/03/autos/wards_auto_CAFE_engineer_survey/ -).

¹²³ Peter Valdes-Dapena, *Auto engineers: Mileage rules will hurt safety*, CNNMoney, (August 3, 2011) (Available at http://money.cnn.com/2011/08/03/autos/wards_auto_CAFE_engineer_survey/ -).

¹²⁴ Defour Group LLC, *STUDY: 56 MPG Standard by MY2025 to Cost 220,000 jobs*, (July 7, 2011) (Available at <http://www.defourgroupp.com>).

¹²⁵ Jay Baron, Sean McAlinden, Greg Schroeder, & Yen Chen, *The U.S. Automotive Market and Industry in 2025*, The Center for Automotive Research, (June 2011) (Available at <http://www.cargroup.org/pdfs/ami.pdf>).

course corrections made, at regular intervals. The impact . . . on the auto industry, and particularly on smaller automakers such as Mazda, cannot be overstated.”¹²⁶ The Alliance of Automobile Manufacturers also cites the long lead time for this rule as problematic: “[a]ny future regulation that encompasses long lead-times, significant potential regulatory burden/cost, and/or uncertain consumer acceptance of new and more costly technologies should also include a mechanism for midpoint adjustments.”¹²⁷

Additionally, on August 9, 2011, President Obama announced new fuel economy standards for heavy duty vehicles for MY 2014-2016.¹²⁸ These standards will negatively affect small businesses and independent truckers. According to the Owner-Operator Independent Drivers Association (OOIDA), “the EPA took a one-size-fits-all approach to this regulation, forcing down technologies that may save fuel.”¹²⁹ The new regulations will drive up the price of new trucks by at least \$6,200 according to EPA’s own calculations.¹³⁰

vi. EPA Greenhouse Gas Tailoring Rule

One of the most significant regulatory undertakings by the EPA is its series of greenhouse gas (GHG) regulations stemming from the *Massachusetts v. EPA*¹³¹ U.S. Supreme Court decision. In that decision, the Court held that EPA must determine whether GHGs endanger human health and safety.¹³² After this ruling, EPA ultimately determined that GHGs from mobile sources are “pollutants,” automatically triggering sections of the Clean Air Act (CAA). Therefore, the law required EPA to regulate GHG emissions from stationary sources under Prevention of Significant Deterioration (PSD) and Title V sections of the CAA.

Under the CAA, emissions thresholds for criteria pollutants are 100 and 250 tons per year (tpy). Using these criteria to regulate GHG emissions, EPA estimates that 82,000 PSD permits would be required each year and six million facilities would need Title V operating permits.¹³³ Therefore, many commercial establishments, apartment buildings, hospitals, and schools could find themselves subject to EPA regulations. In an effort to avoid this result, EPA finalized its tailoring rule for GHG emissions on May 13, 2010.¹³⁴ Following a challenge of all of EPA’s GHG rules, the U.S. Court of Appeals for the District of Columbia Circuit upheld the tailoring

¹²⁶ Letter from Shawn W. Murphy, Vice President and General Counsel, Mazda, to Darrell E. Issa, Chairman, H. Comm. on Oversight and Govt. Reform (June 1, 2012).

¹²⁷ Letter from Mitch Bainwol, President and CEO, Alliance of Automobile Manufacturers, to Darrell E. Issa, Chairman, H. Comm. on Oversight & Govt. Reform (June 1, 2012).

¹²⁸ Press Release, White House, *White House Announces First Ever Oil Savings Standards for Heavy Duty Trucks, Buses* (August 9, 2011)

¹²⁹ Letter from Todd Spencer, Executive Vice President, Owner-Operator Independent Drivers Association, to Darrell E. Issa, Chairman, H. Comm. on Oversight and Govt. Reform (June 1, 2012).

¹³⁰ *Id.*

¹³¹ *Massachusetts v. EPA*, 549 U.S. 497 (2007).

¹³² *Id.*

¹³³ Business Roundtable, Background Paper on Significant EPA Regulations Pending or Proposed, March 24, 2011, available at http://businessroundtable.org/uploads/studies-reports/downloads/20110324_Background_on_Regulation_of_GHG_Under_the_CAA.pdf.

¹³⁴ H. Comm. on Oversight & Gov’t Reform Preliminary Staff Report, *Assessing Regulatory Impediments to Job Creation*, 112th Cong. (2011) available at http://oversight.house.gov/wp-content/uploads/2012/02/Preliminary_Staff_Report_Regulatory_Impediments_to_Job_Creation.pdf.

rule on June 26, 2012.¹³⁵ However, the court did not reach the merits of the rule; instead, the court denied petitioners standing asserting that they were not harmed by the rule.¹³⁶

Under the tailoring rule, EPA now requires sources that are already subject to PSD requirements for other sources of pollution to implement GHG Best Available Control Technology (BACT) requirements.¹³⁷ On July 1, 2011, EPA activated “step two” of the tailoring rule. Under this phase of the regulation, new projects that emit at least 100,000 tpy are subject to PSD permitting requirements. EPA indicated in its final rule that it would revisit the emissions threshold and make future determinations that could increase the number of businesses subject to the onerous permitting requirements.¹³⁸

The uncertainty of the tailoring rule continues to generate concern among job creators who are unclear whether or not their industries will be included in GHG regulations. For example, members of the Agricultural Retailers Association “fear that their farmer customers and their businesses will eventually be brought into the rule.”¹³⁹ The rule would increase electricity costs for farms, which in turn could cause farms to shut down, depleting the customer base for the Agricultural Retailers Association’s members.¹⁴⁰ Furthermore, the National Federation of Independent Businesses raised concerns about the uncertainty that the tailoring rule provides small business because the “small business protections provided in this rule could be thrown out by a court at any time.”¹⁴¹ The Associated Builders and Contractors are similarly concerned that an expanded application of the GHG rules could increase energy costs.¹⁴² It is clear that the changing nature of the tailoring rule, as well as the uncertainty as to whether it will apply to more sources, is of great concern to job creators.

vii. EPA Lead Renovation, Repair and Painting Rule

In 2008, EPA issued the Lead Renovation, Repair and Painting (LRRP) rule pursuant to the Toxic Substances Control Act to address lead-based paint hazards in housing and child-occupied facilities built before 1978.¹⁴³ The rule requires that renovations to a home built before 1978 follow certain work practices supervised by an EPA-certified renovator and performed by

¹³⁵ Tiffany Stecker, *Appeals Court Gives EPA a Big Win on Greenhouse Gas Rules*, ClimateWire, June 27, 2012, available at <http://www.eenews.net/climatewire/2012/06/27/archive/4?terms=tailoring+rule>.

¹³⁶ *Id.*

¹³⁷ H. Comm. on Oversight & Gov’t Reform Preliminary Staff Report, *Assessing Regulatory Impediments to Job Creation*, 112th Cong. (2011) available at http://oversight.house.gov/wp-content/uploads/2012/02/Preliminary_Staff_Report_Regulatory_Impediments_to_Job_Creation.pdf.

¹³⁸ Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31,514 (June 3, 2010) (to be codified at 40 C.F.R. pts 51, 52, 70, 71).

¹³⁹ Letter from Daren Coppack, Agricultural Retailers Association, the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, June 7, 2012 (on file with author).

¹⁴⁰ *Id.*

¹⁴¹ Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, May 31, 2012 (on file with author).

¹⁴² Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, May 31, 2012 (on file with author).

¹⁴³ Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692 (Apr. 22, 2008).

an EPA-certified firm.¹⁴⁴ After a review of the science and consultation with small businesses, EPA determined that an opt-out provision in the rule, exercised at the election of a homeowner, could still protect from the dangers of lead paint.¹⁴⁵ The opt-out provision allowed contractors to forgo the training and work practice requirements if they obtained a certificate from the homeowner stating that no children under age six or a pregnant woman resided in the home.¹⁴⁶ This balanced approach was challenged by special interest environmental groups, and instead of defending the rule in court, EPA opted to enter into a settlement agreement. The settlement agreement required EPA to propose and finalize a new rule that removed the opt-out provision.¹⁴⁷ On October 28, 2009, EPA proposed the rule, and it was finalized on May 6, 2010.¹⁴⁸ On June 7, 2012, bipartisan legislation, the Lead Exposure Reduction Amendments Act of 2012, was introduced to restore the opt-out provision.¹⁴⁹

The removal of the opt-out provision is likely not the end of changes to the LRRP rule. The settlement agreement also mandated that additional lead paint rules be considered.¹⁵⁰ One rule, that was scheduled to be finalized in 2011, would have mandated “lead clearance testing,” which would have required a jobsite be wiped-down with a special EPA-approved wipe and then sent to an EPA-approved lab for lead testing.¹⁵¹ While EPA recognized the burdens associated with this proposed rule and decided not to finalize the clearance testing requirements in the proposed rule,¹⁵² additional rules, applicable to non-residential buildings, are still on schedule to be proposed. The EPA issued an Advance Notice of Proposed Rulemaking to require that exterior renovations to public and commercial buildings, other than those that are child-occupied, adhere to the same lead paint practices as residential buildings.¹⁵³ Another rule may be proposed that requires these practices be applied to the interior renovations of non-residential buildings as well.¹⁵⁴

Despite sharing EPA’s objective of protecting children and pregnant women from lead paint hazards, a broad array of groups from the Business Roundtable to the Window & Door Manufacturers Association continue to identify problems associated with the well-intentioned LRRP rule. In particular, many groups attest that EPA “has not met the requirements of its own rule by failing to recognize an accurate lead test kit, which produces no more than 10 percent

¹⁴⁴ *Id.*

¹⁴⁵ Letter from Susan Walthall, Acting Chief Counsel, & Kevin Bromberg, Chief Counsel for Env’tl Policy, Small Bus. Admin. Office of Advocacy, to the Honorable Lisa Jackson, Administrator, Env’tl Prot. Agency (Nov. 27, 2009).

¹⁴⁶ Lead; Renovation, Repair, and Painting Program, 73 Fed. Reg. 21692 (Apr. 22, 2008).

¹⁴⁷ Motion to Sever and Hold in Abeyance Nos. 08-1235 and 08-1258, *Nat’l Assoc. of Homebuilders v. Env’tl Prot. Agency*, No. 08-1193 (D.C. Cir. Aug. 26, 2009) (settlement agreement between the EPA and public interest groups).

¹⁴⁸ EPA, Lead; Amendment to the Opt-Out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program Final Rule, 75 Fed. Reg. 24802, May 6, 2010.

¹⁴⁹ H.R. 5911, Lead Exposure Reduction Amendments Act of 2012.

¹⁵⁰ Public Interest Petitioners (Sierra Club and New York City Coalition to End Lead Poisoning), et. al. v. Environmental Protection Agency, Settlement Agreement, Case No. 08-1193.

¹⁵¹ *Id.*

¹⁵² Jeremy Jacobs, *EPA Backs Away From Dust Testing Renovation Proposal*, E&E Reporter (July 18, 2011).

¹⁵³ EPA Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings Advance notice of proposed rulemaking, 75 Fed. Reg. 24848, May 10, 2010.

¹⁵⁴ Public Interest Petitioners (Sierra Club and New York City Coalition to End Lead Poisoning), et. al. v. Environmental Protection Agency, Settlement Agreement, Case No. 08-1193.

false positives.”¹⁵⁵ The National Lumber and Building Material Dealers Association and the National Association of Home Builders, among others, emphasize that no test kit is currently available that meets EPA’s requirements. Instead, “[c]urrent test kits can produce up to 60 percent false positives, meaning that in many cases, consumers are needlessly paying additional costs for work practices that are unnecessary.”¹⁵⁶ According to these groups, EPA promised in its rulemaking that “if the improved test kits [were] not commercially available by September 2010, EPA [would] initiate a rulemaking to extend the effective date of [the] final rule for one year with respect to owner-occupied target housing built after 1960.”¹⁵⁷ Despite being petitioned under the Administrative Procedures Act to do this, EPA has failed to keep its commitment.¹⁵⁸

The National Federation of Independent Business (NFIB) adds that the removal of the opt-out provision “ha[s] led homeowners to explore using ‘underground’ contractors that do not comply with the EPA’s requirements at all.”¹⁵⁹ Indeed, a survey conducted by the National Association of the Remodeling Industry shows that 77 percent of homeowners are avoiding the rule by doing remodeling work on their own, or hiring a non-certified contractor to perform the work.¹⁶⁰ Therefore, the rule may be increasing the risk of exposure to lead paint, as well as negatively affecting certified contractors’ ability to compete. As evidence, the National Lumber and Building Material Dealers Association states that “legitimate businesses complying with the LRRP rule cannot compete for much needed work against non-compliant contractors that, ironically, lack the training to actually perform lead-safe renovations and prevent lead hazard exposures.”¹⁶¹ The Small Business Administration Office of Advocacy comments that “[r]eform of the expensive requirements of the current LRRP rule continues to be one of the highest priorities of the small business community.”¹⁶² This is unsurprising as the opt-out provision had saved the industry approximately \$500 million in compliance costs.¹⁶³

¹⁵⁵ See e.g., Letter from Ben Gann, Director of Legislative Affairs, Ntl. Lumber and Building Material Dealers Association to Chairman Issa and Subcommittee Chairman Jim Jordan, June 1, 2012 (on file with author).

¹⁵⁶ Letter from James W. Tobin III, Senior Vice President and Chief Lobbyist, Ntl. Assn. of Home Builders to Chairman Darrell Issa, H. Comm. on Oversight & Gov’t. Reform, June 13, 2012 (on file with author).

¹⁵⁷ Letter from Michael P. O’Brien, President & CEO, Window & Door Manufacturers Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, June 1, 2012 (on file with author).

¹⁵⁸ Letter from Michael P. O’Brien, President & CEO, Window & Door Manufacturers Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, June 1, 2012 (on file with author); Letter from Ben Gann, Director of Legislative Affairs, Ntl. Lumber and Building Material Dealers Association to Chairman Issa and Subcommittee Chairman Jim Jordan, June 1, 2012 (on file with author).

¹⁵⁹ Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, May 31, 2012 (on file with author).

¹⁶⁰ National Association of the Remodeling Industry, Summary of Survey about the EPA’s Lead Renovation, Repair, Painting (LRRP) Rule (June 2011).

¹⁶¹ Letter from Ben Gann, Director of Legislative Affairs, Ntl. Lumber and Building Material Dealers Association to Chairman Issa and Subcommittee Chairman Jim Jordan, June 1, 2012 (on file with author).

¹⁶² SBA Office of Advocacy, Report on the Regulatory Flexibility Act FY 2011: Annual Report of the Chief Counsel of Advocacy on Implementation of the Regulatory Flexibility Act and Executive Order 13272 (Feb. 2012) available at http://www.sba.gov/sites/default/files/11regflx_0.pdf

¹⁶³ Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, May 31, 2012 (on file with author).

NFIB also remains concerned about the upcoming rulemaking which will require work performed on the exterior of commercial and public buildings to adhere to the LRRP rule requirements. NFIB states that “despite a lack of data about how environmental factors like wind can affect the spread of lead dust from these structures This rule will affect not only the construction industry but small-business owners looking to upgrade their facilities to compete economically.”¹⁶⁴

viii. EPA NAAQS PM

Under the Clean Air Act (CAA), EPA has the authority to set National Ambient Air Quality Standards (NAAQS) for several pollutants. If a region is out of compliance with a NAAQS standard, the law imposes stiff penalties including a process whereby EPA takes over a state’s regulatory process and institutes a “federal implementation plan.”¹⁶⁵ EPA is currently contemplating issuing new standards for Particulate Matter (PM), under two separate designations: PM_{2.5}, for smaller or “fine” particles, and PM₁₀, for larger or “coarse” particles. PM is more commonly known as dust, dirt, soot, smoke, and liquid droplets that are emitted from sources ranging from factories to lawn mowers.¹⁶⁶ On June 15, 2012, EPA announced a plan to tighten annual PM_{2.5} regulations, lowering the standard from 15 micrograms per cubic meter to between 12 and 13 micrograms. EPA issued a proposed rule to this effect on Friday, June 29, 2012.¹⁶⁷ The limits for daily measured PM_{2.5} and PM₁₀ would remain the same. EPA proposed this rule as the result of a “sue and settle” agreement with environmental groups and states.¹⁶⁸

The annual PM_{2.5} monitoring system is one that will take three years to determine regional compliance.¹⁶⁹ Given the length of time to determine PM levels, it is unclear which regions would be able to achieve attainment under the new proposed standards for PM_{2.5} and thereby which states would have to face a federal implementation plan from EPA.

As a result of the uncertainty of the regional impact of a new NAAQS for PM_{2.5}, it is unclear what the implications on job creators will be. As the Non-Ferrous Founders’ Society commented, “the exact scope of the proposed revisions is not known.”¹⁷⁰ The Business Roundtable points out that EPA’s other regulations such as Utility MACT and the Cross State Air Pollution rule already create substantial reductions in PM.¹⁷¹ Moreover, they state, “[a]dditional measures to further control for PM are likely to be extremely expensive. The EPA

¹⁶⁴ *Id.*

¹⁶⁵ Staff Report, H. Comm. on Oversight & Gov’t Reform, *Assessing Regulatory Impediments to Job Creation*, Feb. 9, 2011.

¹⁶⁶ Environmental Protection Agency, *Fine Particle (PM_{2.5}) Designations, Frequent Questions*, available at <http://www.epa.gov/pmdesignations/faq.htm>.

¹⁶⁷ Environmental Protection Agency, *National Ambient Air Quality Standards for Particulate Matter, Proposed Rule*, 77 Fed. Reg. 38890 (June 29, 2012).

¹⁶⁸ Jeremy P. Jacobs & Gabriel Nelson, *EPA Proposes Tighter Limits on Soot*, Greenwire, June 15, 2012, available at <http://www.eenews.net/Greenwire/2012/06/15/archive/2>.

¹⁶⁹ *Id.*

¹⁷⁰ Letter from James L. Mallory, Executive Director, Non-Ferrous Founders’ Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov’t Reform, June 1, 2012 (on file with author).

¹⁷¹ Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author)

should consider the PM emission reduction benefits from rules already promulgated before deciding whether to lower the PM standard even more.”¹⁷² The National Oilseed Processors Association pointed out that, “[f]or local communities, a nonattainment designation can mean a loss of industry and economic development; plant closures; loss of federal highway and transit funding; and increased fuel and energy costs.”¹⁷³ The uncertainty surrounding the potential for nonattainment and the impact of a new regulation for PM_{2.5} leaves job creators worried about the impact on their region and ultimately their businesses.

ix. EPA Utility MACT

As a result of a court order, EPA finalized the Mercury Air Toxic Rule, also known as Utility MACT, in December 2011.¹⁷⁴ The court originally required that EPA finalize the rule by November 16, 2011; however, the agency requested an additional month from the court in order to respond to the nearly one million comments that it had received on the rule.¹⁷⁵ Under the new rule, coal-fired utilities have three years to install the required technology. In addition, EPA suggests that it will consider a one-year extension for those utilities that are important for electric grid reliability and cannot comply with the timing of the rule.¹⁷⁶ EPA’s own estimates predict that the rule will cost utilities \$9.6 billion annually and will cause electric generating units to shut down.¹⁷⁷

Industry groups predict that nearly 25 percent of the United States electric generating units will go offline as a result of Utility MACT. This could cause reliability gaps in the electricity grid and more expensive electricity rates. The National Black Chamber of Commerce states, “[t]he most vulnerable members of our community will be forced to bear the burdens of the Utility MACT rule. Low- and very-low income persons will have to deal with higher electricity costs and the potential for more interruptions during heat waves and cold weather.”¹⁷⁸ The U.S. Chamber of Commerce points out that “[a]lthough the rule is supposedly designed to reduce emissions of *mercury* and other *toxic air pollutants*, more than 99.9 percent of the rule’s purported health benefits come from requiring reductions in fine particulate matter (which is already adequately regulated under several existing rules).”¹⁷⁹ The Fertilizer Institute argues that the rule exceeds EPA’s authority under the Clean Air Act because it would effectively require fuel-switching from coal to natural gas that could, “unnecessarily distort market demand for

¹⁷² *Id.*

¹⁷³ Letter from Thomas A. Hammer, President, National Oilseed Processors Association to the Honorable Darrell E. Issa, Chairman, H. Comm. Oversight and Gov’t. Reform, June 1, 2012 (on file with author).

¹⁷⁴ Gabriel Nelson, *Obama Admin Holds Firm on Toxic Power-plant Emissions*, *E&E News*, Dec. 21, 2011, available at <http://www.eenews.net/eenewspm/2011/12/21/archive/1?terms=utility+mact/>.

¹⁷⁵ Gabriel Nelson, *EPA Gets One-Month Extension to Finish Toxics Rule*, *E&E News*, Oct. 21, 2012, available at <http://www.eenews.net/eenewspm/2011/10/21/archive/2?terms=utility+mact/>.

¹⁷⁶ Gabriel Nelson, *Obama Admin Holds Firm on Toxic Power-plant Emissions*, *E&E News*, Dec. 21, 2011, available at <http://www.eenews.net/eenewspm/2011/12/21/archive/1?terms=utility+mact/>.

¹⁷⁷ *Id.*

¹⁷⁸ Letter from Harry C. Alford, President/CEO, Ntl. Black Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, May 30, 2012 (on file with author).

¹⁷⁹ Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, June 1, 2012 (on file with author).

natural gas.”¹⁸⁰ Utility MACT’s broad impact on the nation’s electricity generation means this rule will affect nearly every industry sector, and job creators across America will ultimately struggle to deal with higher energy prices and a greater risk of an unreliable supply of electricity.

b. Labor Regulations

As discussed earlier in this staff report, OSHA backed down from two regulations highlighted in the Committee’s preliminary staff report; however, respondents remain wary of the negative impact of OSHA’s combustible dust rule, the Injury Illness and Prevention Program, and the Silica Rule.

i. OSHA Combustible Dust Rule

A rule to proscribe a combustible dust standard for all industries remains under consideration by OSHA, and regulated entities continue to fear it.¹⁸¹ OSHA has proposed to define combustible dust as “all combustible particulate solids of any size, shape, or chemical composition that could present a fire or deflagration hazard when suspended in air or other oxidizing medium.”¹⁸² Further, in March 2012, in another rulemaking, OSHA designated combustible dust as a hazardous chemical without defining it.¹⁸³ The U.S. Chamber expressed frustration that “OSHA added the combustible dust provision to the final regulatory text although it was not in the proposed regulatory text; it was only mentioned in the preamble commentary.”¹⁸⁴

Categorizing combustible dust as a hazardous chemical appears to be a back-door effort to avoid a controversial rulemaking. The National Association of Manufacturers states that “combustible dust does not yet have a formal definition through a rulemaking By including terms not recognized by [an] international standards-setting organization, OSHA abused its discretion and will ultimately create more confusion, uncertainty and costs.”¹⁸⁵

Others believe that OSHA has failed to show a need for a combustible dust standard applicable to all industries. The American Chemistry Council (ACC) states that OSHA has not “demonstrat[ed] that combustible dust poses a significant risk in the chemical manufacturing

¹⁸⁰ Letter from Ford B. West, President, The Fertilizer Institute to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, June 5, 2012 (on file with author).

¹⁸¹ Department of Labor, Occupational Safety and Health Administration, Combustible Dust, Advanced Notice of Proposed Rulemaking, 74 Fed. Reg. 54334 (Oct. 21, 2009).

¹⁸² *Id.*

¹⁸³ Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, June 4, 2012 (on file with the author).

¹⁸⁴ Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, June 1, 2012 (on file with author).

¹⁸⁵ Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, June 4, 2012 (on file with the author).

sector.”¹⁸⁶ Instead, ACC asserts that OSHA can currently meet safety objectives by enforcing existing rules; thus, a combustible dust standard “will only add onerous requirements to existing regulation.”¹⁸⁷ The American Forest and Paper Association believes the most cost-effective solution is to “rely on performance-based approaches rather than proscriptive standards[,]” which could limit the “many millions of dollars in capital expenditures and higher operating costs” that would cut across the forest products and numerous other industries if the rule is adopted.¹⁸⁸

OSHA is also causing angst for job creators about whether it plans to conduct a statutorily required Small Business Regulatory Enforcement Fairness Act (SBREFA) panel to assess the impact of the rule on small business. The Non-Ferrous Founders’ Society appreciates that OSHA told stakeholders it would conduct a SBREFA panel and held an “experts forum” in May 2011, to discuss “regulatory options that might minimize the costs of reducing or preventing combustible dust hazards for small- and medium-sized businesses while protecting workers from these hazards.”¹⁸⁹ However, it is unclear whether OSHA intended the “experts forum” to be a substitute for the SBREFA panel and if OSHA still intends to meet its statutory SBREFA obligations.¹⁹⁰

ii. OSHA Injury Illness and Prevention Program (I2P2)

Business groups remain concerned about OSHA’s Injury Illness and Prevention Program (I2P2) which would mandate how companies, both large and small, plan, implement, evaluate, and improve processes and activities that protect employee safety and health.¹⁹¹ I2P2 is a high priority for OSHA; yet, OSHA has not formally proposed a rule. It was recently reported that Assistant Secretary of Labor for Occupational Safety and Health, David Michaels, was asked if OSHA would propose the rule before the 2012 elections, and he responded that it was a possibility, but added “but I’m not allowed to say that.”¹⁹²

Employers support improvements to safety and health management; however, they do not believe that government mandates are necessary to achieve these goals. In particular, business groups “have voiced concerns about OSHA’s decision to take a regulatory approach, rather than utilize cooperative tactics to better proliferate . . . useful programs.”¹⁹³ Further, many employers

¹⁸⁶ Letter from Cal Dooley, President and CEO, American Chemistry Council to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, June 12, 2012 (on file with author).

¹⁸⁷ *Id.*

¹⁸⁸ Letter from Donna Harman, President and CEO, American Forest & Paper Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, June 6, 2012 (on file with author).

¹⁸⁹ Letter from James L. Mallory, Executive Director, Non-Ferrous Founders’ Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov’t Reform, June 1, 2012 (on file with author).

¹⁹⁰ *Id.*

¹⁹¹ Injury and Illness Prevention Program, 75 Fed. Reg. 23637 (May 4, 2010).

¹⁹² MSDS Online, OSHA’s Injury and Illness Prevention Program (I2P2) Rising (June 11, 2012), *available at* <http://blog.msds-online.com/2012/06/osha%E2%80%99s-injury-and-illness-prevention-program-i2p2-rising/>.

¹⁹³ Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, May 31, 2012 (on file with author).

voluntarily conduct programs similar to I2P2 to improve health and safety.¹⁹⁴ Member companies of the Associated Builders and Contractors and the American Forest and Paper Association (AFPA) fear that “the proposal could negatively impact employers that already have effective I2P2 programs in place”¹⁹⁵ and believe “it does not make sense for the federal government to . . . add an additional layer of bureaucracy and command-and-control.”¹⁹⁶ AFPA emphasizes that “each company’s workplace environment is unique and in many respects the employer is in the best position to understand what types of programs would meet the needs of its employees.”¹⁹⁷ Therefore, a collaborative approach between OSHA and employers may be a more effective method to improving health and safety.

The cost of the I2P2, especially to small businesses, is also a concern. The Associated Builders and Contractors worries that “significant cost and compliance burdens could be imposed on businesses, and the proposal could lead to ‘double dip’ citations for infractions (once under existing rules, and once under the new I2P2 requirements).”¹⁹⁸ The National Federation of Independent Business believes that “[d]eveloping a formal program could be a costly exercise for small businesses and become a paperwork nightmare.”¹⁹⁹ Moreover, I2P2 “would likely require small businesses to address all ‘foreseeable’ hazards – meaning that any workplace accident, no matter how unlikely, could be interpreted as foreseeable and expose small firms to fines and penalties.”²⁰⁰ The uncertainty of the cost appears to be a legitimate concern as the Associated Builders and Contractors notes that “OSHA has been known to significantly underestimate employer costs.”²⁰¹

iii. OSHA Silica Rule

In the fall of 2010, OSHA announced it intended to pursue a new comprehensive standard for crystalline silica to require methods of compliance, exposure monitoring, worker

¹⁹⁴ Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, May 31, 2012 (on file with author); Letter from Donna Harman, President and CEO, American Forest & Paper Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, June 6, 2012 (on file with author).

¹⁹⁵ Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, May 31, 2012 (on file with author).

¹⁹⁶ Letter from Donna Harman, President and CEO, American Forest & Paper Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, June 6, 2012 (on file with author).

¹⁹⁷ *Id.*

¹⁹⁸ Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, May 31, 2012 (on file with author).

¹⁹⁹ Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, May 31, 2012 (on file with author).

²⁰⁰ *Id.*

²⁰¹ Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, May 31, 2012 (on file with author).

training, and medical surveillance.²⁰² It is believed that the proposed rule will include a reduction of up to 50 percent from current levels in the permissible exposure limit (PEL) of silica as well as set new requirements for engineering controls and other regulated areas.²⁰³ On February 14, 2011, OSHA sent its proposed rule to OIRA where it remains in limbo, causing uncertainty for job creators.²⁰⁴

In the Committee's preliminary staff report, three organizations expressed concern about this rule. Since then, that number has more than doubled. The Associated Builders and Contractors (ABC) points out that "the construction industry has numerous concerns about this anticipated rulemaking, including the economic and technological feasibility of compliance with such a drastic PEL reduction and the possibility of inconsistency or conflict with other federal regulatory requirements from agencies such as the EPA."²⁰⁵ ABC also believes that "OSHA has failed to explain how a lowered PEL will be effective at reducing the number of silica-related illnesses when the agency also has acknowledged it has failed to properly enforce the existing standard."²⁰⁶

Preventing silica diseases is an important goal; yet, the National Association of Manufacturers notes that "significant progress has been made in preventing silica-related diseases under existing regulations, making proposed changes unnecessary and overly burdensome."²⁰⁷ Indeed, the National Sand, Stone & Gravel Association (NSSGA) states that the data does not support the need for the rule. According to NSSGA, "CDC-NIOSH data show a precipitous, downward trend in silicosis cases since the current PEL was established in the early 1970s."²⁰⁸ Moreover, the Non-Ferrous Founders' Society believes that OSHA may have neglected its Small Business Regulatory Enforcement Fairness Act requirements by not selecting the most cost-effective alternative.²⁰⁹ Finally, many groups suggest that because OSHA's proposed rule has been at OIRA for more than 15 months, OIRA may be skeptical of the merits of the rule and the Obama Administration is likely postponing publication of the rule until after the election because the Administration recognizes the rule is a "political liability."²¹⁰

²⁰² Occupational Exposure to Crystalline Silica, Proposed Rule, RIN: 1218-AB70.

²⁰³ Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).

²⁰⁴ Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, June 4, 2012 (on file with the author).

²⁰⁵ Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, May 31, 2012 (on file with author).

²⁰⁶ *Id.*

²⁰⁷ Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending, June 4, 2012 (on file with the author).

²⁰⁸ Letter from Jennifer Joy Penniger, President and CEO, Ntl. Sand, Stone & Gravel Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on file with author).

²⁰⁹ Letter from James L. Mallory, Executive Director, Non-Ferrous Founders' Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov't Reform, June 1, 2012 (on file with author).

²¹⁰ *See* Letter from Jennifer Joy Penniger, President and CEO, Ntl. Sand, Stone & Gravel Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov't. Reform, June 1, 2012 (on

OSHA has categorized the rule as economically significant—meaning it could cost \$100 million annually or more; however, business organizations believe the benefits will not outweigh the costs.²¹¹ While OSHA reportedly estimates the cost of the rule could range from \$500 million to \$600 million,²¹² a study commissioned by the American Chemistry Council estimates that a 50% reduction in the current PEL would have a *net negative impact* of \$2.45 billion annually on the general industry, maritime, and construction industries.²¹³ NSSGA believes that the cost to their members, operators of stone, sand and gravel facilities, “a sector in which compliance with the current PEL is much higher, would . . . likely reach tens or hundreds of millions of dollars since the limits of practical dust-control technology have been reached.”²¹⁴ Finally, another economic analysis performed by engineering and economic experts estimates that the annual compliance costs of the rule could reach \$5.5 billion on the manufacturing, construction, transportation, defense, and high-tech industries.²¹⁵ The Portland Cement Association worries that this could “potentially contribut[e] to historic levels of construction unemployment at a very inopportune time,” and at the very least it should be delayed.²¹⁶

c. Financial Services Regulations

As outlined in the Committee’s preliminary staff report, much of the current regulatory activity in the financial services industry can be directly attributed to implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).²¹⁷ Although only about 36 percent of the roughly 400 rulemakings the Dodd-Frank Act requires have been implemented to date,²¹⁸ there is considerable evidence that regulations stemming from the Dodd-Frank Act may limit competitiveness, job creation and economic growth capabilities. Respondents have noted increased concerns over the past year about three regulatory areas in particular.

file with author); Letter from James L. Mallory, Executive Director, Non-Ferrous Founders’ Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov’t Reform, June 1, 2012 (on file with author); Letter from Charles A. McGrath, Executive Director, Interlocking Concrete Pavement Institute to Chairman Darrell Issa, H. Comm. on Oversight & Gov’t Reform, May 29, 2012 (on file with author).

²¹¹ Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, June 4, 2012 (on file with the author).

²¹² Letter from James L. Mallory, Executive Director, Non-Ferrous Founders’ Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov’t Reform, June 1, 2012 (on file with author).

²¹³ Letter from Jennifer Joy Penniger, President and CEO, Ntl. Sand, Stone & Gravel Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, June 1, 2012 (on file with author).

²¹⁴ *Id.*

²¹⁵ Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, June 4, 2012 (on file with the author).

²¹⁶ Letter from Brian A. McCarthy, President and CEO, Portland Cement Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, June 1, 2012 (on file with author).

²¹⁷ P.L. 111-203, (July 21, 2010).

²¹⁸ See Davis Polk, *Dodd-Frank Progress Report*, p.4, (June 2012).

i. CFPB Structure, Oversight and Regulatory Authorities

The Consumer Financial Protection Bureau (CFPB) is a newly created independent agency empowered by the Dodd-Frank Act with wide-ranging supervisory, enforcement, and rulemaking authority over financial consumer products and services.²¹⁹ In the Committee's preliminary staff report, at least three organizations expressed concerns about some aspect of the CFPB, which has been called the "most powerful agency in American history."²²⁰ Since the report's release, the CFPB has assumed statutory power, and that number of organizations expressing concern has almost tripled.

The American Financial Services Association (AFSA) is concerned that, unlike other independent agencies, the CFPB is "directed by a single regulator," lacks "congressional oversight through the normal budget process" and has "independent litigating authority."²²¹ There is also discomfort about the CFPB's plans to coordinate and streamline the authorities it is assuming from six different federal entities. For instance, the Debt Buyers Association International (DBA) is worried that the CFPB and the Federal Trade Commission "could pursue inconsistent policies" when enforcing the Federal Debt Collection Protections Act (FDCPA),²²² thereby creating "additional uncertainty" for member companies.²²³ AFSA is also concerned that the CFPB can enforce rulemakings on individuals and institutions without first determining "the adequacy of existing state laws and regulations under which these companies operate."²²⁴

Uncertainty regarding the CFPB's regulatory agenda also threatens to decrease credit availability and affordability, harm small businesses, stunt job creation, and jeopardize full economic recovery. For debt buyers, "uncertainty over how the CFPB will exercise its unprecedented powers . . . has stalled industry growth and chilled hiring among DBA member companies."²²⁵ Since companies typically pass compliance costs on to consumers through increased prices, the CFPB's actions will invariably increase the costs of financial products and services, which could harm small businesses disproportionately. For this reason, the Credit Union National Association (CUNA) and other representatives of small businesses encourage the CFPB to convene panels in accordance with Small Business Regulatory Enforcement Fairness Act (SBREFA) and to use its authority under Section 1022 of the Dodd-Frank Act "to exempt small financial institutions, such as credit unions, from its rulemaking."²²⁶

²¹⁹ P.L. 111-203, Title X, § 1011 (July 21, 2010).

²²⁰ Mary Kissel, *Cordray's Charm Offensive*, Wall. St. J., Jan. 13, 2012.

²²¹ Letter from Bill Himpler, President, Executive Vice President, American Financial Services Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with the author).

²²² P.L. 104-208 (Sep. 30, 1996).

²²³ Letter from Jan Stieger, Executive Director, DBA International, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).

²²⁴ Letter from Bill Himpler, President, Executive Vice President, American Financial Services Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 1, 2012) (on file with the author).

²²⁵ Letter from Jan Stieger, Executive Director, DBA International, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).

²²⁶ Letter from Bill Cheney, President & CEO, Credit Union National Association, Executive Director, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov't Spending (June 1, 2012) (on file with the author).

ii. SEC Disclosure Regulations for Resource Extraction Industries

The U.S. Securities and Exchange Commission (SEC) has issued two proposed rules implementing certain disclosure requirements for public companies as required by the Dodd-Frank Act. The “conflicts minerals” rule requires public companies whose products derive from “conflict minerals” (i.e., gold, tin, tantalum and tungsten) to disclose annually whether these “conflict minerals” originated in Democratic Republic of Congo (Congo) or an adjoining country.²²⁷ The “disclosure by resource extraction issuers” rule requires public companies in the U.S. to annually report payments made to U.S. and foreign governments related to the development of oil, natural gas, and mineral extraction.²²⁸ In the Committee’s preliminary staff report, at least five organizations took issue with these rules; since that time, the concerns have tripled.

Several respondents pointed out that compliance with the “conflict minerals” rule will be burdensome and costly. For instance, IPC-Association Connecting Electronics Industries (IPC) states that the rule “could impose extremely burdensome reporting requirements” on certain electronics manufacturers.²²⁹ The National Tooling and Machining Association (NTMA) also notes that compliance costs fall disproportionately on small manufacturers, which often “lack knowledge” about where materials they use originate, and the unintended effects of this rule could “strain customer relationships and lead to lost business for smaller companies.” The Small Business Administration (SBA) has raised similar concerns to the SEC about the cost.²³⁰

While the SEC estimates that actual compliance costs for the “conflict minerals” rule will be around \$71 million and that the rule will “impact between 1,199 and 5,551 companies,” the Business Roundtable attests that these figures “vastly underestimate” true costs.²³¹ Both the U.S. Chamber of Commerce and the National Association of Manufacturers (NAM) reveal that businesses themselves estimate true compliance costs for the rule to be between \$9-16 billion and state that the rule could affect “hundreds of thousands of companies.”²³² The Business Roundtable and American Express state that these costs are so high that, for some companies, “achieving compliance” will be “extremely difficult, if not impossible.”²³³

²²⁷ Conflict Minerals, 74 Fed. Reg. 80948 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 229, 249).

²²⁸ Discloser of Payments by Resource Extraction Issuers, 75 Fed. Reg. 80978 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 229, 249).

²²⁹ Letter from John W. Mitchell, President and CEO, IPC-Association Connecting Electronics Industries, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending (June 1, 2012) (on file with the author).

²³⁰ See Letter from Thomas Donahue, President and CEO, U.S. Chamber of Commerce, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author).

²³¹ Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author).

²³² Letter from Thomas Donahue, President and CEO, U.S. Chamber of Commerce, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author); Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author).

²³³ BR Letter; Letter from Arne Christenson, Senior Vice President, Government Affairs, American Express, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (May 23, 2012) (on file with the author).

Many respondents also urge the SEC to rework the proposed “conflicts minerals” rule before it releases a final ruling. CTIA-The Wireless Association calls implementation of the rule “confusing,” the Consumer Electronics Association (CEA) says the rule’s reporting requirements are too “vaguely worded” and the Business Roundtable implores the SEC to promulgate a rule that is “cost-effective and workable.”²³⁴ According to NAM, “the necessary infrastructure” is not even currently in place “to trace the origin of the minerals or to determine with certainty that they are not conflict minerals” As such, the Motor and Equipment Manufacturers Association (MEMA) and the NTMA suggest the SEC adopt a “phased-in” approach of rule compliance. Others, like the Manufacturing Jewelers & Suppliers of America (MJSA) and the Jewelers of America (JA), question why the SEC is attempting to regulate the minerals trade at all, noting that “using the regulatory authority of the SEC to impact the use of raw materials . . . is troubling and perhaps the wrong approach.”²³⁵

Respondents also expressed concerns that the SEC’s disclosure regulations would put their member companies at a competitive disadvantage internationally. CTIA-The Wireless Association argues that publicly-traded U.S. companies will be at a disadvantage thanks to the “conflicts minerals” rule because “companies that do not file with the SEC will not be required to comply” with the rule.²³⁶ American Express, the Business Roundtable and ConocoPhillips all point out that the one-sided disclosure requirements in the “disclosure by resource extraction issuers” rule could “erode the competitiveness of U.S. companies in global markets” by allowing foreign competitors access to sensitive information on U.S. companies.²³⁷ The American Petroleum Institute provides an example, describing how foreign energy companies, “which control about 78 percent of the world’s oil resources,” would have access to proprietary information without having to disclose similar details.²³⁸

iii. SEC/CFTC Over-the-Counter (OTC) Derivatives Regulation

The SEC and the U.S. Commodities Future Trading Commission (CFTC) are given significant discretion to regulate over-the-counter (OTC) derivatives trade by the Dodd-Frank Act.²³⁹ Although this new regulatory structure is far from complete, the rules proposed so far have caused a significant amount of alarm within the U.S. business community. In the Committee’s preliminary staff report, at least five organizations claimed that OTC derivatives rules were problematic; since the report’s release, three more organizations have expressed concerns.

²³⁴ Letter from Michael Petricone, Senior Vice President, Consumer Electronics Association to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author).

²³⁵ Letter from David Cochran, President & CEO, Manufacturing Jewelers & Suppliers of America (MJSA) and Matthew Runci, President & CEO, Jewelers of America, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (May 25, 2012) (on file with the author).

²³⁶ Letter from Steve Largent, President & CEO, CTIA Wireless Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author).

²³⁷ Letter from Red Cavaney, Senior Vice President, Government Affairs, ConocoPhillips Company, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 7, 2012) (on file with the author).

²³⁸ Letter from Marty Durbin, Executive Vice President, American Petroleum Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 6, 2012) (on file with the author).

²³⁹ P.L. 111–203, Title VII, (July 21, 2010).

Respondents are generally worried that new OTC derivatives regulations “will create a burdensome structure that will make it more costly” to enter into derivatives transactions, which companies use to “hedge,” or mitigate, business related risks.²⁴⁰ There is also concern that these rules “will create uncertainty in overseas markets,” which could put U.S. businesses at a competitive disadvantage internationally.²⁴¹ ConocoPhillips is also concerned that the CFTC and SEC’s new definitions of “swap dealers” and “major swap participants” entail large compliance costs and may cause companies to “curtail their risk management hedging activities” to avoid classification.²⁴² If companies are less willing to transact financial derivatives, market liquidity could be reduced, which could have dire consequences for economic growth and job creation.²⁴³

The main point of contention for respondents, however, is the CFTC’s recently finalized “end user exception to the mandatory clearing of swaps” rule. (For an explanation of this rule, see p. 48-9 of the preliminary staff report). American Express, AFSA, and the Business Roundtable believe that this rule will divert resources from business investment and job creation because it requires certain non financial companies that use derivatives to hedge, or mitigate, their exposure to commercial risk (so-called “end-users”) to “post margin,” or set aside capital in case they fail. Respondents believe this diversion of resources could “seriously harm” economic recovery, increase risk and volatility stall economic growth and, as NAM adds, possibly “driv[e] up the cost of capital.”²⁴⁴ A U.S. Chamber of Commerce/Business Roundtable survey reveals that, if “end-users” are required to post margin, or set cash aside, under this rule, that would force U.S. businesses “to sideline up to \$6.7 billion in working capital . . . and lead to over 100,000 jobs lost.”²⁴⁵

III. New Problematic Regulations for Job Creators

In addition to the rules that business groups brought to the Committee’s attention for a second time, a plethora of new job-stifling regulations were also identified. While it is beyond the scope of this staff report to discuss all the new regulations that respondents identified as problematic, the appendix identifies them in their entirety. The following section discusses

²⁴⁰ Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author).

²⁴¹ Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author); Letter from Arne Christenson, Senior Vice President, Government Affairs, American Express, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (May 23, 2012) (on file with the author).

²⁴² Letter from Red Cavaney, Senior Vice President, Government Affairs, ConocoPhillips Company, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 7, 2012) (on file with the author).

²⁴³ *Id.*

²⁴⁴ Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 4, 2012) (on file with the author).

²⁴⁵ Letter from Thomas Donahue, President and CEO, U.S. Chamber of Commerce, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author).

several regulations that were of concern to multiple organizations with a focus on energy, environmental, labor, and financial services regulations.

a. Energy and Environmental Regulations

A wide variety of industries—including agriculture, automobile, construction, energy, forestry, manufacturing, transportation, and small business—view energy and environmental regulations and policies as extremely harmful to jobs and investment. The regulations identified below, stemming from the EPA, the Department of Interior (DOI), and the General Services Administration, received the most complaints.

i. EPA Clean Water Act 404(c) Permitting – Pebble Mine

The EPA continues to attempt to expand its statutory authority under section 404 of the Clean Water Act (CWA) to regulate mining operations. In 2011, EPA cited Section 404(c) of the CWA when it retroactively vetoed a duly issued Army Corps of Engineers permit for mining operations in West Virginia.²⁴⁶ In April 2012, a U.S. District Court judge struck down EPA's retroactive veto.²⁴⁷ The judges' ruling stated that EPA had no authority under the CWA to carry out a retroactive veto.²⁴⁸ Despite the federal court's ruling, EPA appears ready to attempt to expand its 404 permitting authority yet again.

In 2011, the EPA received petitions from anti-mining activists calling for a preemptive veto of a permit for the Pebble Mine Project under Section 404 of the Clean Water Act. The Pebble Mine project is a copper and other mineral extraction project that would be located in Southwest Alaska near Bristol Bay. The Pebble Mine would create 1,000 permanent jobs and 2,000 construction jobs in an area of Alaska with high unemployment and low job growth and opportunity.²⁴⁹ These jobs would pay an average of \$90,000 per year.²⁵⁰ Moreover, the Pebble Mine would represent an investment of billions of dollars into the economy of Alaska. Currently, the project is undertaking environmental studies focusing on environmental impacts and exploratory drilling. The Pebble Project has not yet applied to EPA for a CWA permit, nor has it begun the National Environmental Policy Act (NEPA) process. However, the EPA appears poised to strike down the project before it has the opportunity to apply for CWA permits.

It appears that EPA is considering using an unprecedented and legally questionable interpretation of the CWA to preemptively veto permits for the Pebble Mine. In apparent preparation of this veto, EPA released a draft Watershed Assessment on May 18, 2012. This watershed assessment may be used as justification to deny permits to the Pebble Mine before a plan is even submitted to the agency. In fact, EPA believes that it possesses the authority to deny

²⁴⁶ Manuel Quinones, *Judge Scraps EPA Veto, Greenlights W.Va. Mountaintop Coal Project*, *Energy & Environment News PM*, Mar. 23, 2012, available at <http://www.eenews.net/eenewspm/2012/03/23/archive/1?terms=404>.

²⁴⁷ *Id.*

²⁴⁸ *Mingo Logan Coal Company, Inc., v. U.S. EPA*, No. 10-0541, slip op. at 10 (D.D.C. Mar. 23, 2012).

²⁴⁹ The Pebble Partnership, *Opportunity*, available at <http://www.pebblepartnership.com/opportunity.php>.

²⁵⁰ Letter from John Shively, CEO, The Pebble Partnership, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, June 29, 2012 (on file with author).

a permit before a sponsor even applies under Section 404(c) of the CWA, as indicated in a letter sent by EPA in response to Chairmen Issa and Jordan.²⁵¹

The Pebble Partnership has spent over \$500 million in studying the environmental impacts of a potential mine and in preparing for the 404 permitting process.²⁵² However, the Pebble Project has “encountered an EPA that has seemingly embraced the actions sought by our organized opposition and is now helping them to build a justification (through a flawed watershed assessment) for EPA to expand their jurisdiction using a legally questionable interpretation of the Clean Water Act.”²⁵³ Moreover, the Pebble Partnership wrote that “[i]f a 404(c) preemptive veto is granted or conditions are imposed by the EPA, it will chill additional investment in and attendant jobs from mining projects nationwide.”²⁵⁴ EPA may also extend its justification beyond the mining sector; for example, environmental groups have similarly petitioned EPA to perform a watershed assessment of the Great Lakes area.²⁵⁵ The Pebble Project is simply calling for “due process” and to “understand why, in these challenging economic times, a federal agency can operate outside of the standard NEPA process to potentially stop a project before it has been defined or filed for a single permit.”²⁵⁶

ii. EPA Clean Water Act Definition of “Waters of the United States”

On April 27, 2011, the EPA issued draft guidance to provide “clarification” on the question of which bodies of water are subject to federal regulation by EPA and the Army Corps of Engineers (Corps) under the Clean Water Act (CWA).²⁵⁷ In the draft guidance, EPA expands its reach and seeks to regulate a broad category of wetlands, regardless of its status as navigable water. This guidance document is intended to replace and supersede similar guidance issued in 2008, in response to the U.S. Supreme Court’s *Rapanos v. United States*²⁵⁸ decision. In *Rapanos*, the Court rejected the position of the Corps that its authority over water was essentially limitless under the CWA.²⁵⁹ Rather, the Court found that the term “waters of the United States” “includes only those relatively permanent, standing or continuously flowing bodies of water ‘forming geographic features’ that are described in ordinary parlance as ‘streams[,] ... oceans, rivers, [and] lakes.’”²⁶⁰ In addition, the Court held that all waters with a “significant nexus” to “navigable waters” are covered under the CWA.²⁶¹ The words “significant nexus” remain open to judicial interpretation and considerable controversy. Legislation was introduced in the 110th and 111th Congress that would have expanded the definition of waters of the US to include

²⁵¹ Letter from Arvin Ganesan, Associate Administrator, EPA, to Hon. Darrel Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, June 22, 2012 (on file with author).

²⁵² Letter from John Shively, CEO, The Pebble Partnership, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov’t Reform, June 29, 2012 (on file with author).

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ Environmental Protection Agency and Army Corps of Engineers, “Draft Guidance on Identifying Waters Protected by the Clean Water Act,” April 27, 2011, p. 2, *available at* http://water.epa.gov/lawsregs/guidance/wetlands/upload/wous_guidance_4-2011.pdf.

²⁵⁸ *Rapanos v. United States*, 547 U.S. 715 (2006).

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

intrastate waters and reaffirmed the original Corps interpretation struck down by the Supreme Court.²⁶² These measures never gained sufficient support to pass through either Chamber of Congress.

The definition of what is legally a “Water of the US” is extremely important as it triggers multiple responsibilities under the CWA, including a federal prohibition on discharges of pollutants (Section 301), requirements to obtain a permit prior to discharge (Sections 402 and 404), water quality standards and measures to attain them (Section 303), oil spill liability and oil spill prevention and control measures (Section 311), certification that federally permitted activities comply with state water quality standards (Section 401), and enforcement (Section 309).²⁶³ EPA and the Corps acknowledge that, compared with the existing guidance, the proposed revisions are likely to increase the number of waters identified as protected by the CWA.²⁶⁴

Multiple job creators expressed their concern for EPA’s draft guidance. According to NFIB, the EPA is aiming to expand the definition of U.S. waters that are “navigable” in some cases to even small depressions or farm ponds that do not impair the flow of rivers.”²⁶⁵ According to the National Association of Manufacturers, “[t]he EPA and the Corps are trying to accomplish through revised guidance what the 110th and 111th Congress refused to do: an unprecedented expansion of federal jurisdiction under the CWA.”²⁶⁶ The National Soy Bean Processors Association argues that the extremely broad view of the scope of federal authority would encompass many natural landscape features not readily recognizable as “water” and thwart any rational limits established by Congress or the U.S. Supreme Court.”²⁶⁷ They also note that EPA has failed to explain how the new expanded definition will apply to the many CWA provisions that would be implicated by the guidance.²⁶⁸ The American Forest and Paper Association points out that it is, “an excellent example of ‘regulation by guidance’ -- the Administration began, but never concluded, a rulemaking process covering very similar issues”²⁶⁹ The Agricultural Retailers Association worries that the guidance has serious legal implications and will open farmers up to CWA citizen and third-party lawsuits through other policies like the National Pollutant Discharge Elimination System (NPDES) permits for pesticides and application and spray drift.²⁷⁰

²⁶² Claudia Copeland, Legislative Approach to Defining Waters of the United States, Dec. 29, 2010, *available at* <http://www.fas.org/sgp/crs/misc/R41225.pdf>.

²⁶³ *Id.*

²⁶⁴ Environmental Protection Agency and Army Corps of Engineers, "Draft Guidance on Identifying Waters Protected by the Clean Water Act," April 27, 2011, p. 2, *available at* http://water.epa.gov/lawsregs/guidance/wetlands/upload/wous_guidance_4-2011.pdf.

²⁶⁵ Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, May 31, 2012 (on file with author).

²⁶⁶ Letter from Jay Timmons, President, National Association of Manufacturers to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, June 4, 2012 (on file with author).

²⁶⁷ Letter from Thomas A. Hammer, President, National Oilseed Processors Association to the Honorable Darrell E. Issa, Chairman, H. Comm. Oversight and Gov’t. Reform, June 1, 2012 (on file with author).

²⁶⁸ *Id.*

²⁶⁹ Letter from Donna Harman, President, American Forest & Paper Association to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, May 31, 2012 (on file with author).

²⁷⁰ Letter from Daren Coppack, Agricultural Retailers Association, the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, June 7, 2012 (on file with author).

iii. EPA Resource Conservation and Recovery Act Definition of “Solid Waste”

On July 22, 2011, EPA proposed to revise the definition of “solid waste” under the hazardous waste provisions of the Resource Conservation and Recovery Act (RCRA).²⁷¹ The revisions affect how EPA determines whether secondary materials are being *recycled* or *discarded*, and hence qualify as “waste.” The proposed amendments remove specific recycling exclusions from the current regulations, thereby increasing the burden on manufacturers seeking to recycle or reclaim secondary materials. The Non-Ferrous Founders’ Society called attention to an absurdity of the rule, pointing out that the regulation would even apply to “in-plant recycling of materials intended for internal use.”²⁷² The Non-Ferrous Founders’ Society urged EPA to recognize the obvious: “solid waste definitions [should] only be applied to materials that are abandoned or otherwise destined for disposal.”²⁷³

The process that led to this proposed redefinition of solid waste is a classic example of EPA’s use of sue-and-settle rulemaking. The most recent definition of solid waste, promulgated in 2008, “was the product of two years of collaboration between the EPA and stakeholders.”²⁷⁴ Nonetheless, on January 29, 2009, the Sierra Club petitioned the Obama Administration to reconsider the rule.²⁷⁵ In a settlement agreement filed on September 10, 2010, EPA voluntarily committed to address all of the issues raised in the Sierra Club’s petition, and to issue a proposed redefinition by June 30, 2011.²⁷⁶ EPA could not meet this deadline, demonstrating the impracticality of the settlement’s prescribed timeline.

Ironically, the rule will operate to defeat one of the fundamental tenets of environmentalism: recycling. The American Coatings Association noted that as currently written, “the regulations will discourage sustainable materials management and lead to an increase in the incineration, waste treatment, and landfill disposal of secondary materials.”²⁷⁷ The The IPC–Association Connecting Electronic Industries concurs, stating that the new definition will “impose significant regulatory burdens on recycling.”²⁷⁸

Ultimately the proposed redefinition will impose extraordinary costs with few discernible benefits: the American Forest and Paper Association writes that the new rule “will add significant administrative burdens to the industry with *no environmental benefit* and possibly would disrupt the industry’s practices which have proven to be effective, efficient, and

²⁷¹ Definition of Solid Waste, 76 Fed. Reg. 44,094, July 22, 2011.

²⁷² Letter from James L. Mallory, Executive Director, Non-Ferrous Founders’ Society, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, June 1, 2012 (on file with author).

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ EPA’s and Sierra Club’s Lodging of Settlement and Motion to Sever and Hold Case in Abeyance, Sierra Club v. Environmental Protection Agency, No. 09-1041 (D.D.C. Sept. 9, 2010).

²⁷⁶ *Id.*

²⁷⁷ Letter from J. Andrew Doyle, President, American Coatings Association, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, June 1, 2012 (on file with author).

²⁷⁸ Letter from Dr. John W. Mitchell, President and CEO, IPC–Association Connecting Electronics Industries, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, June 1, 2012 (on file with author).

environmentally protective.”²⁷⁹ The Business Roundtable estimates that EPA’s proposed definition of solid waste “will cost more than \$100 million a year in documentation and analysis costs.”²⁸⁰ The National Federation of Independent Business highlighted the rule’s unique harms to small businesses: “[m]any scrap yards and other small business love to recycle scrap metal because of its high value EPA is seeking to impose a significant new paperwork requirement on these small-business owners.”²⁸¹

iv. EPA Chemical Data Reporting Rule

The Chemical Data Reporting (CDR) rule is a periodic reporting rule under the Toxic Substance Control Act that requires manufacturers and importers to submit information to the EPA on the chemicals they manufacture or import. On August 16, 2011, EPA issued a new rule that dramatically expanded the program’s reporting requirements.²⁸² EPA asserted the new standards will “better address Agency and public information needs, improve the usability and reliability of the reported data, and ensure that data are available in a timely manner.”²⁸³ In fact, the revised CDR will significantly increase the regulatory burden on affected businesses.

The revised CDR imposes unjustifiable burdens by slashing the reporting threshold and requiring the disclosure of confidential business information.²⁸⁴ The previous rule required detailed reporting for substances manufactured or imported in quantities above 100,000 pounds per year. The new CDR will decrease this threshold to 25,000 pounds per year in future reporting cycles.²⁸⁵ The National Oilseed Processors Association observes that its members *already* “spen[d] considerable resources compiling this processing and use information.”²⁸⁶ Lowering the reporting threshold to such a low level will exponentially increase compliance costs.

A major flaw of the new CDR rule is that it repetitively counts chemicals regenerated from a byproduct in a loop or cycling process.²⁸⁷ The American Forest & Paper Association observes that “repetitive counting leads to grossly misleading information, which serves neither the public interest nor the purposes of the CDR.”²⁸⁸ The IPC–Association Connecting Electronic Industries concurs, noting that the CDR rule “results in duplicate, and in some cases triplicate,

²⁷⁹ Letter from Donna Harman, President and CEO, American Forest & Paper Association, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, June 6, 2012 (on file with author) (emphasis in original).

²⁸⁰ Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, June 1, 2012 (on file with author).

²⁸¹ Letter from Susan Eckerly, Senior Vice President for Public Policy, National Federation of Independent Businesses, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, May 31, 2012 (on file with author).

²⁸² TSCA Inventory Update Reporting Modifications; Chemical Data Reporting, 76 Fed. Reg. 50,815, 50,816, Aug. 16, 2011.

²⁸³ *Id.*

²⁸⁴ Letter from Donna Harman, President and CEO, American Forest & Paper Association, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, June 6, 2012 (on file with author).

²⁸⁵ TSCA Inventory Update Reporting Modifications; Chemical Data Reporting, 76 Fed. Reg. 50,815, 50,816, Aug. 16, 2011.

²⁸⁶ Letter from Thomas A. Hammer, President, National Oilseed Processors Association, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, June 1, 2012 (on file with author).

²⁸⁷ *Id.*

²⁸⁸ *Id.*

annual reporting of many of these byproducts which are already reported under the EPA Toxic Release Inventory program and under RCRA biennial reporting.”²⁸⁹ Furthermore, as written the rule creates great uncertainty among industry. The Non-Ferrous Founders’ Society observes:

[F]acilities that recycle, reprocess, reclaim or reuse byproducts (or send the material offsite for reuse) – such as foundries – may or may not be subject to the reporting requirements depending on whether under the applicable regulatory criteria their generated byproducts are considered reportable chemical substances that are ‘manufactured’ and thus subject to the rule.²⁹⁰

IPC–Association Connecting Electronic Industries succinctly captures the fundamental indictment of the CDR as currently written: “by requiring all manufacturers that recycle byproducts to report those byproducts as new chemicals, the EPA will create burdensome, costly and unnecessary regulatory requirements that penalize manufacturers for doing the right thing – recycling.”²⁹¹

v. EPA Tier 3 Gasoline Standards

EPA is considering new Tier 3 gasoline standards that would reduce the sulfur content of gasoline from the current 30 parts per million (ppm) to as low as 10 ppm.²⁹² The anticipated Tier 3 standards appear to be closely related to the MY 2017-2025 fuel economy/greenhouse gas emissions regulations. In fact, one industry official explains that the Tier 3 standards are necessary for the auto industry to meet the Administration’s proposed emissions regulations: “gasoline quality improvements nationwide will enable automakers to develop and refine advanced engine technologies needed to meet the stringent [greenhouse gas] emissions standards which EPA has proposed for 2017-2025 model years.”²⁹³

Section 209 of the Energy Independence and Security Act (EISA) required EPA to conduct a study to determine whether “renewable fuel volumes . . . will adversely impact air quality as a result of changes in vehicle and engine emissions of air pollutants.”²⁹⁴ Although EISA required the study to be issued eighteen months after EISA’s enactment in December 2007

²⁸⁹ Letter from Dr. John W. Mitchell, President and CEO, IPC–Association Connecting Electronics Industries, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, June 1, 2012 (on file with author).

²⁹⁰ Letter from James L. Mallory, Executive Director, Non-Ferrous Founders’ Society, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, June 1, 2012 (on file with author).

²⁹¹ Letter from Dr. John W. Mitchell, President and CEO, IPC–Association Connecting Electronics Industries, to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t. Reform, June 1, 2012 (on file with author).

²⁹² See U.S. Evtl. Prot. Agency, Progress Report, January 2012, <http://www.epa.gov/lawsregs/rulemaking/retrospective/documents/eparetroreviewprogressrpt-jan2012.pdf>; Baker & O’Brien, Inc., Addendum to Potential Supply and Cost Impacts of Lower Sulfur, Lower RVP Gasoline 12 (Mar. 2012); Letter from James M. Inhofe, Ranking Member, S. Comm. on Environment and Public Works, et al. to Lisa Jackson, Administrator, Evtl. Prot. Agency 1 (Jan. 12, 2012).

²⁹³ Letter from Michael J. Stanton, Global Automakers, to Lisa P. Jackson, Evtl. Prot. Agency (Feb. 17, 2012).

²⁹⁴ Pub. L. 110-140 § 209, 121 Stat. 1492, 1531 (2007).

(by the summer of 2009),²⁹⁵ EPA has still not completed the study and there are indications that EPA will release the study simultaneously with its Tier 3 proposal.²⁹⁶

In addition, much like the MY 2017-2025 fuel economy/greenhouse gas emissions regulations, EPA's expected regulatory action on the Tier 3 standards comes only after the State of California has created the potential for a patchwork of regulations through its independent rulemaking. The anticipated Tier 3 gasoline standards are intended to align the federal standards with California's updated Low Emission Vehicle (LEV III) regulations, which were approved by the California Air Resources Board (CARB) on January 27, 2012.²⁹⁷ Global Automakers reported that "[i]t is critical to vehicle manufacturers that the Federal and California standards are fully harmonized within the earliest possible timeframe so that wasteful, duplicate certification processes can be avoided. Even relatively small differences between Federal and California regulations could necessitate separate manufacturer certification processes, creating additional resource needs and compliance cost to be borne by the vehicle manufacturers and ultimately consumers."²⁹⁸

The costs that could be imposed, including the price at the pump, are a main concern surrounding Tier 3 standards. The total cost could reach \$8 billion,²⁹⁹ and a recent independent study concludes the costs for the needed reduction in sulfur to meet the standards would raise the cost of gasoline by six to nine cents per gallon.³⁰⁰ American Fuel & Petrochemical Manufacturers reported to the Committee that the rule could also "lead to significant domestic fuel supply reductions, higher petroleum product imports, potentially increased consumer costs, increased refinery emissions, closed U.S. refineries and reduced energy security."³⁰¹

vi. DOI Bureau of Land Management (BLM) Hydraulic Fracturing on Federal Lands

This past spring, the U.S. Department of Interior Bureau of Land Management (BLM) issued a proposed rule regulating hydraulic fracturing on Federal land and Indian land.³⁰² Most notably, the rule would require public disclosure of the chemicals companies use in hydraulic fracturing operations on public and Indian lands.³⁰³ The rule also proposes to strengthen well-

²⁹⁵ *Id.*

²⁹⁶ See, e.g., "The American Energy Initiative: A Focus on Rising Gasoline Prices": Hearing before the H. Subcomm. on Energy and Power of the H. Comm. on Energy and Commerce, 112th Cong. (2012) (prepared testimony of Charlie Drevna, American Fuel and Petrochemical Manufacturers).

²⁹⁷ Press Release, Cal. Air Resources Bd., California Air Resources Board Approves Advanced Clean Car Rules (Jan. 27, 2012).

²⁹⁸ Letter from Michael J. Stanton, President and CEO, Global Automakers, to Darrell E. Issa, Chairman, H. Comm. on Oversight and Govt. Reform, June 5, 2012 (on file with author).

²⁹⁹ See Sam Batkins, Regulatory Freeze Could Save At Least \$22.1 Billion, 2.6 Million Hours, and Thousands of Jobs, American Action Forum (July 2012).

³⁰⁰ Baker & O'Brien, Inc., Addendum to Potential Supply and Cost Impacts of Lower Sulfur, Lower RVP Gasoline 12 (Mar. 2012).

³⁰¹ Letter from Charles T. Drevna, President, American Fuel & Petrochemical Manufacturers, to Darrell E. Issa, Chairman, H. Comm. on Oversight & Govt. Reform, June 5, 2012 (on file with author).

³⁰² Oil and Gas; Well Stimulation, Including Hydraulic Fracturing, on Federal and Indian Lands, 77 Fed. Reg. 92 (proposed May 11, 2012) (to be codified at 43 C.F.R. pt. 3160).

³⁰³ *Id.*

bore integrity regulations to ensure certain construction standards are met, as well as address flowback water issues by requiring operators to develop flowback management plans.³⁰⁴ No specific public disclosure requirement for hydraulic fracturing currently exists, making this rule a new precedent for the industry. On June 25, 2012, in a limited reprieve for jobs creators, and shortly after a Subcommittee on Technology, Information Policy, Intergovernmental Relations and Procurement Reform hearing highlighting the problems with the rule,³⁰⁵ the BLM announced that it is extending the public comment period until September 10, 2012.³⁰⁶

Of the concerns expressed by various groups regarding BLM's proposed rule, the most frequent dealt with the role that states have historically played in regulating the hydraulic fracturing activity that occurs within their borders. With a unique understanding of the risks and challenges posed by the particular geography and geology of any given area, "states have historically and effectively regulated hydraulic fracturing and have demonstrated an ability to modify their regulatory programs as appropriate as shale development expands."³⁰⁷ The states understand the unique circumstances surrounding the lands within their borders better than the federal government and, accordingly, have regulated the industry successfully for many years. According to the American Petroleum Institute, "[i]t simply isn't necessary to add a new regime of federal regulation on top of what is already highly competent management and oversight."³⁰⁸ Federal regulation in this instance could result in standards and requirements that are duplicative or inconsistent with current state regulations.³⁰⁹

The other predominant concern raised about the proposed hydraulic fracturing rule was its potential impact on the nation's energy security, deficit, and economic growth. According to API, "[t]he shale revolution is changing the face of American energy development . . . [and] the potential is there to do far more[;] how much more will depend in part on government regulations."³¹⁰ The Business Roundtable agrees, stating that "[t]hese resources, if they are allowed to be developed, promise to dramatically improve U.S. energy security, reduce the balance of [the] payments deficit and accelerate economic growth."³¹¹ BLM's proposed rule, however, mandates a one-size-fits all regulation on various aspects of hydraulic fracturing operations on public and Indian lands.³¹² The Independent Petroleum Association of America

³⁰⁴ *Id.*

³⁰⁵ *Rhetoric vs. Reality, Part II: Assessing the Impact of New Federal Red Tape on Hydraulic Fracturing and American Energy Independence: Hearing Before the Subcomm. on Technology, Information Policy, Intergovernmental Relations and Procurement Reform of the H. Comm. on Oversight and Gov't Reform*, 112th Cong. (2012).

³⁰⁶ BLM News Release, BLM Extends Public Comment Period for Proposed Hydraulic Fracturing Rule (June 25, 2012), available at <http://www.blm.gov/or/news/files/hydraulic-fracturing.pdf>.

³⁰⁷ Letter from Marty Durbin, Executive Vice President, American Petroleum Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, June 6, 2012 (on file with author).

³⁰⁸ *Id.*

³⁰⁹ *See, e.g.*, Letter from Red Cavaney, Senior Vice President of Governmental Affairs, Conoco Phillips Company, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, June 7, 2012 (on file with author).

³¹⁰ Letter from Marty Durbin, Executive Vice President, American Petroleum Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, June 6, 2012 (on file with author).

³¹¹ Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, June 1, 2012 (on file with author).

³¹² Letter from Barry Russell, President and CEO, Independent Petroleum Association of America, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform, May 31, 2012 (on file with author).

believes that this rule and the time delays and uncertainty it brings makes conducting operations on federal lands less appealing to America's oil and natural gas producers.³¹³

vii. General Services Administration Adoption of Leadership in Energy and Environmental Design (LEED) Program

A number of responses specified concerns about the General Services Administration's (GSA) adoption and implementation of the Leadership in Energy and Environmental Design (LEED) system. In the fall of 2010, GSA announced its upgraded requirement for LEED Gold certification as the minimum standard for all new federal building construction and renovation products.³¹⁴ The latest proposed version, LEED v4, moves toward a green chemistry approach, identifying "chemicals of concern" and providing credits for avoidance of those substances.³¹⁵ By requiring LEED certification for all federal buildings, GSA mandates compliance from any company wishing to do business with the government.

The Energy Independence and Security Act of 2007 (EISA) requires GSA to review and recommend green building rating systems to assess how well a building meets green criteria and to enable the federal government to achieve a greater level of energy efficiency.³¹⁶ Since EISA's enactment, GSA has overwhelmingly favored the LEED system, developed by the independent United States Green Building Council (USGBC), as its standard for federal building initiatives. LEED is a certification system that focuses on a number of specific green building elements to provide building owners and operators with a framework for implementing green building design, construction, operation, and maintenance solutions.³¹⁷ Certification provides independent, third-party verification that a particular structure was designed and built using strategies aimed at environmental efficiency at one of four possible levels.³¹⁸

Various groups contend that the proposed LEED v4 program is a significant departure from current standards. Therefore, it has the potential to distort the marketplace by eliminating the use of numerous useful construction materials and proven building products that may not be incorporated into the new LEED program or eligible for LEED credits.³¹⁹ According to the American Chemistry Council (ACC), the standards imply to the market that "materials otherwise at the forefront of improving environmental performance and occupant safety in buildings should no longer be used. The credits encourage or reward [the] elimination of chemicals in building

³¹³ *Id.*

³¹⁴ Press Release, GSA, GSA Moves to LEED Gold for All New Federal Buildings and Major Renovations (October 28, 2010), *available at* <http://www.gsa.gov/portal/content/197325>.

³¹⁵ Letter from Cal Dooley, President and CEO, American Chemistry Council, to the Honorable Rodney M. Alexander, U.S. House of Representatives (May 31, 2012), *available at* https://www2.buildinggreen.com/sites/buildinggreen.com/files/Blog_Images/PDFs/LeedFollowup.pdf.

³¹⁶ Letter from Cal Dooley, President and CEO, American Chemistry Council, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 12, 2012) (on file with author).

³¹⁷ U.S. Green Building Council: What LEED Is, *available at* <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1988>.

³¹⁸ *Id.*

³¹⁹ Letter from Cal Dooley, President and CEO, American Chemistry Council, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 12, 2012) (on file with author); Letter from Mike Acott, President, National Asphalt Pavement Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov't Reform (June 4, 2012) (on file with author).

products without regard to how they help energy-efficient building products perform their purpose.”³²⁰ By imposing building standards based on the particular materials and methods used in construction, federal implementation of the LEED v4 program amounts to the government picking winners and losers in the construction materials industry. The LEED v4 program, as currently proposed, will drive up federal building costs for the taxpayer and eliminate jobs,³²¹ all for speculative savings and benefits.³²² Indeed, the American Coatings Association believes LEED v4 “would increase the cost of construction and prohibit the use of a wide-range of architectural paint and coatings without a strong scientific basis.”³²³

In addition to potential market implications, respondents also expressed concern about the process USGBC uses to develop LEED standards that have since been adopted and implemented by the federal government. ACC, the American Coatings Association, and the National Asphalt Pavement Association (NAPA) took issue with the lack of formality and transparency in a process used to develop what essentially amount to federal mandates.³²⁴ ACC is troubled by the fact that “the Federal government is requiring its buildings to achieve certification from a system which is developed through a process that is not sufficiently open or transparent, and does not maintain an appropriate balance of interests or an appeals process.”³²⁵ NAPA adds that USGBC “is not overseen by elected representatives and there is no formal process for accountability to Congress.”³²⁶ Despite these realities, however, this non-governmental group has grown to exert a great deal of influence and power within the federal government, and its “decisions have a direct bearing on commerce in the United States.”³²⁷

NAPA pointed out that Members of Congress have also recognized these potential impacts and process issues in a May 18, 2012, letter to GSA Acting Administrator Daniel M. Tangherlini. The letter specifically expresses concern that the proposed LEED v4 rating system will eliminate the use of various proven building products and become “a tool to punish chemical companies and plastics makers and spread misinformation about materials that have been at the forefront of improving environmental performance—and even occupant safety—in buildings.”³²⁸ Moreover, USGBC, in developing LEED v4 standards, failed to conduct any concrete analysis that indicates its preferred alternative materials would perform effectively.³²⁹ In sum, this

³²⁰ Letter from Cal Dooley, President and CEO, American Chemistry Council, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform 3 (June 12, 2012) (on file with author).

³²¹ *Id.*

³²² Letter from Mark A. Casso, President, Construction Industry Round Table, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 1, 2012) (on file with author).

³²³ Letter from J. Andrew Doyle, President and CEO, American Coatings Association Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform 3 (June 1, 2012) (on file with author).

³²⁴ Letter from Cal Dooley, President and CEO, American Chemistry Council, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 12, 2012) (on file with author); Letter from Mike Acott, President, National Asphalt Pavement Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 4, 2012) (on file with author).

³²⁵ Letter from Cal Dooley, President and CEO, American Chemistry Council, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform 3 (June 12, 2012) (on file with author).

³²⁶ Letter from Mike Acott, President, National Asphalt Pavement Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform 1 (June 4, 2012) (on file with author).

³²⁷ *Id.*

³²⁸ Letter from Members of the House of Representatives to Daniel M. Tangherlini, Acting Administrator, GSA 1 (May 18, 2012) (on file with author).

³²⁹ *Id.*

bipartisan group of Members of Congress believe that GSA’s adoption of proposed LEED v4 standards “would amount to the federal government sanctioning an unscientific, arbitrary, and discriminatory program of materials selection” that would be “counterintuitive to [its] mission, and will cost numerous American jobs, while wasting taxpayer dollars.”³³⁰

b. Labor Regulations

This year, two rules issued by the National Labor Relations Board (NLRB), the notice posting rule and the “quickie election” rule, were frequently criticized by job creators. Both rules have been struck down by the courts, but continue to create uncertainty for respondents as the NLRB intends to pursue them despite the court decisions. The Department of Labor’s persuader activity rule also received numerous complaints. These rules, in particular, which have no direct bearing on the health, safety, or security of the American people, go against President Obama’s promise of limiting regulations to those necessities. Instead, many view these rules as an effort to boost the declining population of private-sector labor unions.

i. NLRB Notice Posting Rule

On August 30, 2011, the National Labor Relations Board issued a final rule that requires employers subject to the National Labor Relations Act (NLRA) to post a notice of select employee rights under the NLRA.³³¹ In particular, the notice emphasizes employees’ right to unionize and collectively bargain, but it does not include workers’ rights to object to the use of their union dues and fees for political purposes.

A broad array of industries, spearheaded by the U.S. Chamber of Commerce and the National Association of Manufacturers, disputed the NLRB’s authority to issue the rule and filed suit. On March 2, 2012, the U.S. District Court for the District of Columbia found that the NLRB had the authority to issue the rule; however, the court invalidated most of the enforcement mechanisms as improper under the NLRA.³³² On April 13, 2012, the U.S. District Court for the District of South Carolina reached the opposite conclusion—finding that under the “plain language and structure of the [NLRA]” the NLRB “lack[ed] authority . . . to promulgate the rule.”³³³ Subsequent to this ruling, the D.C. District Court directed the NLRB to delay implementation of the rule pending the outcome of appeals. The NLRB continues to believe it has the authority to issue the rule and intends to fight business representatives throughout the appeals process.³³⁴

Business organizations argue that the rule is a ploy by the NLRB to achieve private-sector unionization by regulation, and they are emphatic in their belief that the NLRB is

³³⁰ *Id.*

³³¹ Notification of Employee Rights Under the National Labor Relations Act, Final Rule, 76 Fed. Reg. 54006 (Aug. 30, 2011).

³³² *National Association of Manufacturers v. National Labor Relations Board*, Memorandum Opinion, No. 11-1629 (ABJ) (D.C. Dist. Ct. Mar. 2, 2012).

³³³ *Chamber of Commerce of the United States and South Carolina Chamber of Commerce v. National Labor Relations Board*, Order, No. 2: 11-cv-02516-DCN (SC Dist. Ct. Apr. 13, 2012).

³³⁴ Office of Public Affairs, National Labor Relations Board, NLRB Chairman Mark Gaston Pearce on recent decisions regarding employee rights posting, Apr. 17, 2012, *available at* <http://www.nlr.gov/news/nlr-chairman-mark-gaston-pearce-recent-decisions-regarding-employee-rights-posting>.

exceeding its statutory bounds under the NLRA. The Western Growers Association believes the rule “will make it easier for traditional union organizing efforts[,]” and the Agricultural Retailers Association notes that “legislative history makes clear the intent of Congress that the NLRB does not have the authority to issue a notice posting rule since Congress explicitly grants such authority to other agencies in relevant statutes.”³³⁵ However, Congress did not grant such authority in the NLRA. Moreover, the National Council of Textile Organizations (NCTO) “believes that workers are fully aware of their rights in the workplace and clearly understand that workplace complaints can be filed with the NLRB, the U.S. Department of Labor, and the Equal Employment Opportunity Commission (EEOC)[;]” therefore, the rule not only exceeds statutory authority, but it is also unnecessary.³³⁶ Indeed, “NCTO members strive to fulfill the letter and spirit of the laws meant to protect the health and safety of the workers who are employed by the industry.”³³⁷

Notwithstanding the status of the rule, business organizations are concerned about the cost and practical implications if it is allowed to move forward. According to the NLRB’s own estimates, six million employers could be affected by the rule imposing a compliance burden of \$386.4 million.³³⁸ The Brick Industry Association believes the rule “could set a disturbing precedent and chill job creation.”³³⁹ The National Federation of Independent Business argues that “since the NLRB can only investigate matters brought to its attention by employees, the [rule] serves as a mechanism for the Board to increase its caseload and influence over small businesses.”³⁴⁰ The Non-Ferrous Founders’ Society notes that the rule is especially problematic because it is “not subject to the same open and candid . . . review as are those [rules] of other agencies”³⁴¹ At a broader level, some fear “there is a danger that [the] politically-motivated Board will continue to issue decisions and propose rules that run counter to an effective employer-employee relationship.”³⁴² The Non-Ferrous Founders’ Society hopes that Congress will step in to return the NLRB to an “unbiased and non-evangelistic judge” of labor-management disputes.³⁴³

³³⁵ Letter from Daren Coppack, Agricultural Retailers Association, the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, June 7, 2012 (on file with author).

³³⁶ Letter from Cass Johnson, President, National Council of Textile Organizations to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, June 1, 2012 (on file with author).

³³⁷ *Id.*

³³⁸ National Labor Relations Board, Notification of Employee Rights Under the National Labor Relations Act, Final Rule, 76 Fed. Reg. 54006 (Aug. 30, 2011).

³³⁹ Letter from J. Gregg Borchelt, President and CEO, Brick Industry Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight and Gov’t Reform, May 25, 2012 (on file with author).

³⁴⁰ Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, May 31, 2012 (on file with author).

³⁴¹ Letter from James L. Mallory, Executive Director, Non-Ferrous Founders’ Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov’t Reform, June 1, 2012 (on file with author).

³⁴² Letter from Robert E. McKenna, President and CEO, Motor & Equipment Manufacturers Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight and Gov’t Reform, June 1, 2012 (on file with author).

³⁴³ Letter from James L. Mallory, Executive Director, Non-Ferrous Founders’ Society to Chairman Darrell Issa, H. Comm. on Oversight & Gov’t Reform, June 1, 2012 (on file with author).

ii. NLRB “Quickie Election” Rule

On December 22, 2011, the NLRB issued a final rule that alters the procedures for union organizing elections.³⁴⁴ The rule, commonly known as the “quickie election” rule, allows an organizing election to occur in 15 to 20 days versus the current average of 39 days and the NLRB’s own target of 42 days. It also postpones certain pre-election challenges until after the union election. The U.S. Chamber of Commerce and the Coalition for a Democratic Workplace challenged the rule on multiple procedural and substantive grounds. On May 14, 2012, the U.S. District Court for the District of Columbia invalidated the rule on the basis that the NLRB lacked the quorum required under the National Labor Relations Act when it issued the rule. The court quipped that, “[a]ccording to Woody Allen, eighty percent of life is just showing up. When it comes to satisfying a quorum requirement, though, showing up is even more important than that. Indeed, it is the only thing that matters”³⁴⁵ The court chose not to rule on the additional challenges and indicated that its ruling “need not necessarily spell the end of the final rule for all time.”³⁴⁶ The NLRB has indicated it will likely continue to pursue the rule.³⁴⁷

Business organizations argue that the rule greatly limits an employer’s ability to lawfully educate employees and “tilt[s] the playing field in favor of organized labor” at the expense of free speech and due process rights.³⁴⁸ The American Frozen Food Institute and the Interlocking Concrete Pavement Association stress that the current labor environment is fair and balanced which provides an adequate opportunity for unions and employers to discuss their views, for or against, unionization in the workplace. In contrast, employers believe the new rule is an attempt by “union sympathizers,” who failed to achieve “card check,” to undermine the will of Congress by allowing unions to be certified before employers have a chance to communicate with employees “creat[ing] opportunities for mischief and misconduct”³⁴⁹ The Brick Industry Association attests that the rule “restrict[s] employees full access to important facts and employers’ free speech and due process rights during union representation elections.”³⁵⁰ Indeed, “[b]y rushing the timeframe . . . employees will be forced to make a decision without relevant details, and employers will be unable to offer balanced information on collective bargaining.”³⁵¹

³⁴⁴ National Labor Relations Board, Representation—Case Procedures, Final Rule, 76 Fed. Reg. 80138 (Dec. 22, 2011).

³⁴⁵ U.S. *Chamber of Commerce and Coalition for a Democratic Workplace v. National Labor Relations Board*, Memorandum Opinion, No. 11-2262 (JEB) (D.C. Dist. Ct. May 14, 2012).

³⁴⁶ *Id.*

³⁴⁷ See Office of Public Affairs, National Labor Relations Board, NLRB suspends implementation of representation case amendments based on court ruling, May 15, 2012, *available at* <http://www.nlr.gov/news/nlr-suspends-implementation-representation-case-amendments-based-court-ruling>.

³⁴⁸ Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t Reform, June 1, 2012 (on file with author).

³⁴⁹ Letter from Charles A. McGrath, Executive Director, Interlocking Concrete Pavement Institute to Chairman Darrell Issa, H. Comm. on Oversight & Gov’t Reform, May 29, 2012 (on file with author); Letter from Kraig R. Naaz, President and CEO, American Frozen Food Institute to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t Reform, June 1, 2012 (on file with author).

³⁵⁰ Letter from J. Gregg Borchelt, President and CEO, Brick Industry Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight and Gov’t Reform, May 25, 2012 (on file with author).

³⁵¹ *Id.*

It is also believed that the NLRB significantly underestimated the cost of the rule and that small businesses, in particular, will be hit hard by costly legal fees. The U.S. Chamber of Commerce emphasizes that the NLRB estimated the costs based on the limited number of employers who have faced election petitions in the past, but “ignored the facts” that the rule could increase the filing of petitions and that a shortened schedule imposes preparation costs on employers who have to anticipate the risk of a petition in advance of actual filing.³⁵² The National Association of Manufacturers emphasizes that “smaller-sized manufacturers who lack the legal expertise to navigate complex and detailed labor laws” could see a significant increase in violations for unknowing employers.³⁵³ The NFIB had similar concerns stating “[t]his shortened timeframe would hit small businesses particularly hard, since small employers usually lack labor-relations expertise and in-house legal departments.”³⁵⁴

Others stress that the rule could have a negative effect on the economy. The American Bakers Association believes that the rule “will continue to deter economic growth,” and it is just another example of the NLRB’s “willingness to . . . to circumvent regular order to advance a specific agenda.”³⁵⁵ Indeed, the Brick Industry Association believes that “[s]uch extreme and unnecessary changes to long-standing election procedures disrupt business and jeopardize job creation as the brick industry struggles to rebound.”³⁵⁶

iii. DOL Persuader Activity Rule

On June 21, 2011, the U.S. Department of Labor’s (DOL) Office of Labor-Management Standards proposed a rule to revise its reporting requirements for employer and consultant “persuader activity” under the Labor Management Reporting and Disclosure Act (LMRDA).³⁵⁷ Section 203 of the LMRDA outlines reporting requirements for employers and their consultants who enter into an agreement aimed at affecting employees’ decisions to unionize.³⁵⁸ Currently, attorneys and other third parties who are not in direct contact with employees are exempt from reporting requirements under the “advice” exemption.³⁵⁹ The proposed rule revises DOL’s long-

³⁵² Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t Reform, June 1, 2012 (on file with author).

³⁵³ Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, June 4, 2012 (on file with the author).

³⁵⁴ Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, May 31, 2012 (on file with author).

³⁵⁵ Letter from Robb MacKie, President and CEO, American Bakers Association to Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, June 1, 2012 (on file with author).

³⁵⁶ Letter from J. Gregg Borchelt, President and CEO, Brick Industry Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight and Gov’t Reform, May 25, 2012 (on file with author).

³⁵⁷ Department of Labor OLMS News Release, US Labor Department announces proposed rule concerning reporting on use of labor relations consultants, June 20, 2011.

³⁵⁸ Department of Labor Office of Labor-Management Standards, Labor-Management Reporting and Disclosure Act; Interpretation of the “Advice” Exemption, Proposed Rule 76 Fed. Reg. 36178 (June 21, 2011).

³⁵⁹ Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t Reform, May 31, 2012 (on file with author).

standing interpretation of, and significantly narrows, the “advice” exemption, thus expanding reporting requirements beyond active union organizing and collective bargaining activities.³⁶⁰

Business groups assert that the proposed rule is a “drastic expansion” of communications that trigger the reporting requirements, which will infringe upon free speech and attorney-client confidentiality.³⁶¹ In a reverse of long-standing practice, “even the most routine advice from a lawyer to an employer facing an organizing drive would be subject to disclosure. The end result will be a chilling effect on the number of lawyers providing labor relations advice and increased pressure on employers not to exercise their legally protected rights, such as free speech.”³⁶² Indeed, a shareholder at Littler Mendelson, P.C., a law firm providing advice to employers in labor and employment law, has expressed concern about the “extensive” substantive problems with the rule because it may require both the attorney and the client to report vast amounts of confidential and financial data discouraging attorneys from assisting employers.³⁶³

According to the National Association of Manufacturers, the Brick Industry Association, and the Retail Industry Leaders Association, the practical effect of the rule is an attempt to “ga[g]” small businesses so that they “will not have essential information on what can and cannot be legally said or done during the election process, limiting legitimate education efforts so employees hear both sides before voting on union representation.”³⁶⁴ The National Federation of Independent Business argues:

For nearly 50 years the DOL has recognized that legal advice is excluded from reporting under federal labor law. The proposed new rule would force lawyers and law firms that counsel a small business on most labor relations matters, and whether the business has a union or not, to disclose not only their work with that client, but also all fees and arrangements for all clients for all labor-relations services. The net result could well be that many lawyers will no longer take on clients seeking labor-relations counsel.³⁶⁵

The Motor & Equipment Manufacturers Association echoes NFIB’s sentiment, viewing the proposed rule “as potentially devastating to employers, particularly smaller employers, who need

³⁶⁰ Department of Labor OLMS News Release, US Labor Department announces proposed rule concerning reporting on use of labor relations consultants, June 20, 2011.

³⁶¹ Letter from Geoffrey Burr, Vice President, Federal Affairs, Associated Builders and Contractors, Inc. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t Reform, May 31, 2012 (on file with author); Letter from Jay Timmons, President & CEO, National Association Manufacturers to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, June 4, 2012 (on file with author).

³⁶² Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t Reform, June 1, 2012 (on file with author).

³⁶³ See Letter from Michael J. Lotito, Littler Mendelson, P.C. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t Reform, May 31, 2012 (on file with author).

³⁶⁴ Letter from Jay Timmons, President & CEO, National Association Manufacturers, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, June 4, 2012 (on file with the author); Letter from J. Gregg Borchelt, President and CEO, Brick Industry Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight and Gov’t Reform, May 25, 2012 (on file with author).

³⁶⁵ Letter from Susan Eckerly, Senior Vice President, Public Policy, National Federation of Independent Businesses to the Honorable Darrell E. Issa, Chairman, H. Comm. on Oversight and Gov’t Reform, May 31, 2012 (on file with author).

the advice of counsel to make appropriate decisions on how to communicate with their employees within the confines of labor law.”³⁶⁶

It is also believed that DOL significantly underestimated the cost of the rule. While DOL estimated that the rule would impose a cost of \$826,000 annually,³⁶⁷ business groups estimate the proposed rule is economically significant—meaning it could have an effect of \$100 million or more annually on the economy.³⁶⁸ According to the U.S. Chamber of Commerce, who conducted interviews and received input from actual employers who must comply with the current requirements, the amount of time required to determine whether a form must be filed is more than double DOL’s “arbitrary” estimate.³⁶⁹ Moreover, it is argued that DOL vastly underestimated the number of employers who would need to make the determination of whether the required form should be filed.³⁷⁰ Accounting for these deficiencies, the U.S. Chamber estimates that the compliance costs could be more than \$203 million annually—well within the barometer for an economically significant rule.³⁷¹ Moreover, contrary to Executive Order requirements, DOL does not justify the costs of the rule by providing a monetary estimate of the benefits.³⁷²

c. Financial Services Regulations

The majority of the new financial services regulations identified as problematic stem from implementation of the Dodd-Frank Act, with which most respondents agree is “too costly and cumbersome to comply.”³⁷³

i. CFPB Remittance Transfers Rule

The first official final rulemaking released by the CFPB relates to the regulation of “remittance transfers,” which are monetary payments that workers in one country send abroad.³⁷⁴ The CFPB’s final rule, which was originally proposed by the Federal Reserve Board (FRB), requires remittance transfer providers to make certain pre-transaction disclosures to consumers (i.e., all fees charged by institutions, all taxes charged by foreign governments, precise exchange rate used, and the exact date funds will be received, among others).³⁷⁵ “Remittance transfers,” which account for billions of dollars annually in the U.S., were not covered by any consumer

³⁶⁶ Letter from Robert E. McKenna, Motor & Equipment Manufacturers Association to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, June 1, 2012 (on file with author).

³⁶⁷ Department of Labor Office of Labor-Management Standards, Labor-Management Reporting and Disclosure Act; Interpretation of the “Advice” Exemption, Proposed Rule 76 Fed. Reg. 36178 (June 21, 2011).

³⁶⁸ Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, June 1, 2012 (on file with author).

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² Letter from Michael J. Lotito, Littler Mendelson, P.C. to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, May 31, 2012 (on file with author).

³⁷³ Letter from Timothy Farrell, President & CEO, American Hardware Manufacturers Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 1, 2012) (on file with the author).

³⁷⁴ Remittance Transfers, 77 Fed. Reg. 6194, (final rule Feb. 7, 2012) (to be codified at 12 C.F.R. pt 1005).

³⁷⁵ *Id.*

protection laws until the enactment of the Dodd-Frank Act.³⁷⁶ Instead of protecting consumers from unscrupulous providers, however, respondents suggest this rule could instead “cut a lifeline” to individuals abroad who oftentimes depend on remittance transfer payments for survival.³⁷⁷

The Independent Community Bankers Association (ICBA) calls this rule a “daunting compliance challenge,” adding that it is “impossible” for banks and credit unions (which service about 95 percent of all remittance transfers in the U.S.) to comply with required consumer disclosures because they do not even have access to all of the necessary information (i.e., fees charged by foreign institutions, precise exchange rate used, and the exact date funds will be received, among others).³⁷⁸ ICBA estimates that, because of this rule, “some 3,000 to 4,000 banks, and perhaps an equal number of credit unions, will exit the remittance business.”³⁷⁹ ICBA adds that the remaining providers “will enjoy extraordinary, government-conferred, market power” and that lack of competition in the market “will cause prices to spike” and eventually reduce “product availability.”³⁸⁰ The U.S. Chamber of Commerce is also concerned because “[t]he final rule did not include a quantitative cost benefit analysis.”³⁸¹ For all of these reasons, ICBA urges the CFPB “to delay” implementation of this final rule and to “undertake a comprehensive study of consumer impact, pricing for remittances of a range of dollar amounts, and product accessibility.”³⁸²

ii. CFPB Defining Larger Participants Rule

The CFPB recently issued a proposed rule to assert its broad supervisory authority over certain non-bank entities that offer consumer financial products and services.³⁸³ These non-depository companies, like mortgage lenders, check cashers, payday lenders, consumer reporting agencies and debt collectors, have never before been under a federal supervision program. The “defining larger participants” rule expands the CFPB’s nonbank supervision program to the latter two entities in particular.³⁸⁴ The CFPB determined that “large participants” in the debt collecting industry are those companies with more than \$10 million in “annual receipts,” a threshold that DBA thinks “has been set too low.”³⁸⁵ For its member entities determined to be

³⁷⁶ See, e.g., Paul Hastings, *CFPB’s First Final Rule Addresses International Remittance Transfers*, January 20, 2012.

³⁷⁷ Letter from Camden Fine, President & CEO, Independent Community Bankers of America, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending (June 1, 2012) (on file with the author).

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ Letter from Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce to Chairman Darrell Issa and Subcommittee Chairman Jim Jordan, H. Comm. on Oversight & Gov’t. Reform, June 1, 2012 (on file with author).

³⁸² Letter from Camden Fine, President & CEO, Independent Community Bankers of America, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending (June 1, 2012) (on file with the author).

³⁸³ Defining Larger Participants in Certain Consumer Financial Products and Services Markets, 77 Fed. Reg. 9592 (proposed Feb. 17, 2012) (to be codified at 12 C.F.R. pt 1090).

³⁸⁴ *Id.*

³⁸⁵ Letter from Jan Stieger, Executive Director, DBA International, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending (June 1, 2012) (on file with the author).

“larger participants,” DBA is also concerned about the “potential costs associated with CFPB supervision” and is concerned that some of these companies “may be choosing to wait and see what CFPB supervision will cost instead of seeking to grow and hire new employees.”³⁸⁶ These concerns are problematic because the number of consumers who rely on debt collection services is significant: according to this proposed rule, roughly 30 million Americans owe debt subject to the collection process.³⁸⁷

iii. CFPB Ability to Repay Rule

The CFPB has the responsibility to issue a final rule that assesses a consumer’s ability to repay a residential mortgage loan.³⁸⁸ Initially proposed by the FRB, the “ability-to-repay” rule must provide a federal definition for what constitutes a high quality, low cost “qualified mortgage” (QM). This rule is meant to ensure that borrowers are not sold mortgages they cannot afford. However, if the CFPB is not careful, this rule could price millions of Americans out of the mortgage market at a time where it has already become more difficult to qualify for affordable home loans. Since the QM standard “will form the foundation for mortgage lending for years to come,” respondents like the National Association of Homebuilders (NAHB) want to ensure that the “ability-to-pay” rule is implemented “in a manner that causes minimum disruptions to the mortgage lending process.”³⁸⁹

Respondants believe that the CFPB should formulate a broad QM rule with a “safe harbor” provision to ensure that access to loans is open to the largest number of creditworthy borrowers. The U.S. Chamber of Commerce contends that if the QM definition is too narrow, “credit would contract and millions of Americans will be frozen out of the mortgage market.”³⁹⁰ AFSA agrees, adding that a narrowly defined QM rule could “undermine prospects for a housing recovery and threaten the redevelopment of a sound mortgage market.”³⁹¹ Moreover, since “there is substantial uncertainty over the level of legal protection provided to qualified mortgages,”³⁹² NAHB and AFSA argue that, without a “safe harbor” provision in the QM definition, “banks would further restrict home lending because they would be fearful of the risks of litigation if consumers are unable to repay a mortgage.”³⁹³

³⁸⁶ *Id.*

³⁸⁷ Defining Larger Participants in Certain Consumer Financial Products and Services Markets, 77 Fed. Reg. 9592 (proposed Feb. 17, 2012) (to be codified at 12 C.F.R. pt 1090) at 19.

³⁸⁸ Ability to Repay (Qualified Mortgage), 76 Fed. Reg. 27390 (proposed May 11, 2011) (to be codified at 12 C.F.R. pt 226).

³⁸⁹ Letter from James Tobin III, Senior Vice President and Chief Lobbyist, Government Affairs, Nat’l Ass’n of Home Builders, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform, (June 13, 2012) (on file with the author).

³⁹⁰ Letter from Thomas Donohue, President and CEO, U.S. Chamber of Commerce, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author).

³⁹¹ Letter from Bill Himpler, President, Executive Vice President, American Financial Services Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 1, 2012) (on file with the author).

³⁹² Letter from Richard Jennison, President & CEO, Manufacturing Housing Institute, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform, (June 5, 2012) (on file with the author).

³⁹³ Letter from James Tobin III, Senior Vice President and Chief Lobbyist, Government Affairs, Nat’l Ass’n of Home Builders, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform, (June 13, 2012) (on file with the author).

iv. Credit Risk Retention Rule

Six federal agencies recently proposed a “credit risk retention” rule, which implements a different, but related, mortgage lending requirement from the Dodd-Frank Act.³⁹⁴ The “credit risk retention” rule requires “securitizers” to retain five percent of the credit risk for asset-backed securities (ABS) they package.³⁹⁵ The “credit risk retention” rule is supposed to ensure that these issuers have some “skin in the game,” so they are less inclined to create risky ABSs, which contributed to the financial crisis. This five percent requirement allows an exemption for issuers that securitize Qualified Residential Mortgages (QRMs), which require borrowers to meet at least a 20 percent down payment requirement. Although the “credit risk retention” rule affects a smaller amount of residential mortgages than the “ability to pay” rule, namely only those that are securitized, respondents are still concerned that the rule is not being fashioned carefully.

Namely, AFSA, ICBA and NAHB are all concerned that the agencies will define QRMs too narrowly. ICBA in particular warns that an “unreasonably narrow definition of QRM will drive thousands of community banks and other lenders from the residential mortgage market” and “severely limit credit availability to many borrowers who do not have significant down payments or who, despite high net worth, have relatively low incomes and high debt-to-income ratios.”³⁹⁶ As is the case with the ability to repay rule, if the CFPB is not careful, this rule could make it more difficult, if not impossible, for millions of Americans to purchase homes. Since normalizing conditions in U.S. housing markets are crucial to the nation’s overall economic recovery, the CFPB must be cautious in fashioning rules that have such a profound impact on mortgage lending. To define QRM any other way, respondents argue, would “undermine a housing recovery by negative impacting the cost and availability of mortgage financing”³⁹⁷

v. CFPB TILA-RESPA Integration Rule

The CFPB is required to integrate the conflicting mortgage purchasing disclosure requirements that currently exist from the Real Estate Settlement and Procedures Act (“RESPA”) and the Truth in Lending Act (“TILA”).³⁹⁸ Specifically, the Dodd-Frank Act requires the CFPB to propose a single, integrated disclosure form for mortgage loan transactions.³⁹⁹ TILA and RESPA have required mortgage lenders and settlement agents to provide homebuyers

³⁹⁴ The six agencies are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Securities and Exchange Commission and the Department of Housing and Urban Development; P.L. 111–203, § 941 (July 21, 2010).

³⁹⁵ Credit Risk Retention (Qualified Residential Mortgage), 76 Fed. Reg. 24090 (proposed April 29, 2011) (to be codified at 24 C.F.R. pt 267).

³⁹⁶ Letter from Camden Fine, President & CEO, Independent Community Bankers of America, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending (June 1, 2012) (on file with the author).

³⁹⁷ Letter from James Tobin III, Senior Vice President and Chief Lobbyist, Government Affairs, Nat’l Ass’n of Home Builders, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform, (June 13, 2012) (on file with the author); *see also* Letter from Bill Himpler, President, Executive Vice President, American Financial Services Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 1, 2012) (on file with the author).

³⁹⁸ Mortgage Disclosure Integration (Regulation X; Regulation Z), (proposed July 2012).

³⁹⁹ P.L. 111–203 Title XIV (July 21, 2010).

duplicative disclosure forms regarding loan terms and costs for over thirty five years.⁴⁰⁰ The ostensible purpose of this effort, which is known as “Know Before You Owe” at the CFPB, is to improve customers’ understanding of mortgage purchases and to reduce settlement, or closing, costs; however, respondents have raised several concerns.

Chiefly, the American Land Title Association (ALTA) is concerned that the “TILA-RESPA integration” rule will be costly, disproportionately burdensome to small businesses and hard to integrate with other mortgage related provisions outlined in the Dodd-Frank Act.⁴⁰¹ ALTA calls increased compliance costs required of settlement agents (\$800 per employee, \$2,360 to train leaders, 20% increase in software maintenance) “debilitating,” as the typical settlement agents gross “less than \$500,000 per year,” and notes that annual revenue would decrease by 20 percent “due to decreased productivity.”⁴⁰² ALTA is concerned that the CFPB’s proposed rule could drive local small business settlement agents out of the marketplace completely, giving the competitive advantage to large, national vendors instead. ALTA and AFSA are also concerned whether the CFPB is taking a “coordinated, deliberate approach” to implementing the “TILA-RESPA integration” rule with other mortgage rules.⁴⁰³ Finalizing this rule before other lending rules required by the Dodd-Frank Act could “add unnecessary costs and delays to industry’s implementation and . . . confuse consumers.” ALTA also sees this approach as not meeting the goals of President Obama’s E.O. 13563, which urged agencies to “identify and use the best, most innovative and least burdensome tools for achieving regulatory ends.”⁴⁰⁴

vi. FRB Enhanced Prudential Standards Rule

The FRB proposed an “enhanced prudential standards” rule as required by the Dodd-Frank Act.⁴⁰⁵ The rule includes a wide variety of measures, including risk-based capital and leverage limits, liquidity requirements, stress test requirements, and early remediation requirements. The rule applies to U.S. bank holding companies with assets of \$50 billion or more and any nonbank financial firms designated as systemically important companies (SIFIs) by the Financial Stability Oversight Council (FSOC).⁴⁰⁶ Although these enhanced prudential standards were intended to prevent or mitigate the risks to financial stability that could arise from the failure of large, interconnected financial entities, respondent feedbacks suggests the rule may end up doing more harm than good.

The Business Roundtable and American Express contend that “[a]ny excessive charges on banks make it more expensive for banks to lend money and costs businesses more to borrow

⁴⁰⁰ See TILA (P. L. 90-321, May 29, 1968); RESPA (P. L. 93-533, December 22, 1974).

⁴⁰¹ Letter from Steven Buckman, Pam Day, Celia Flowers and David Windle, American Land Title Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending (May 30, 2012) (on file with the author).

⁴⁰² *Id.*

⁴⁰³ Letter from Bill Himpler, President, Executive Vice President, American Financial Services Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 1, 2012) (on file with the author).

⁴⁰⁴ Letter from Steven Buckman, Pam Day, Celia Flowers and David Windle, American Land Title Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending (May 30, 2012) (on file with the author).

⁴⁰⁵ Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, (April 3, 2012) (codified at 12 C.F.R. pt 1310).

⁴⁰⁶ *Id.*

money.”⁴⁰⁷ As such, they argue that the rule is “poorly constructed and will impose costs on economic growth with no evidence of corresponding benefits.”⁴⁰⁸ The Financial Services Roundtable similarly argues that the “enhanced prudential standards” rule “has the potential to negatively affect job creation and economic recovery by making credit less available and more costly.”⁴⁰⁹ Since the rule forces certain non-bank companies into bank-like regulations for the first time, “despite many of their non-bank like activities,” the U.S. Chamber of Commerce has concerns that it “will imperil the diversity of capital and tighten up liquidity in the marketplace.”⁴¹⁰ Similarly, the Financial Services Roundtable actually argues that “the tenor of the proposed rule suggests that the FRB “may be using the proposed standards to cause a reduction in the size of large banks through size-based regulation.”⁴¹¹ Since “it is important for the American and global economies that there be banks of all sizes,” as it allows the banking industry “to serve customers from the very smallest firms to the largest, including multinational companies, with convenience that matches the needs of our customers, innovation that all types of banks can provide, and financings to bolster economic growth and job creation by meeting the demands of customers of all sizes.”⁴¹²

vii. FSOC Nonbank Systematically Important Financial Institution (SIFI) Designation

The FSOC recently finalized rules and guidelines on the designation process of nonbank systemically important financial institutions (“SIFIs”).⁴¹³ FSOC will likely designate nonbank firms as “SIFIs” by the end of the year, at which time they will be placed under supervision by the FRB and become subject to the “enhanced prudential standards” rule that is described in more detail above. The intention of regulating large, interconnected nonbanks for the first time is to prevent the next financial crisis; however, respondents question whether efforts by the FRB will be more costly than they are effective.

To qualify as a nonbank SIFI, a company must be “predominantly engaged in financial activities.”⁴¹⁴ The Dodd-Frank Act provides that a nonbank qualifies here if 85% of its assets

⁴⁰⁷ Letter from John Engler, President, Business Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author); Letter from Arne Christenson, Senior Vice President, Government Affairs, American Express, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (May 23, 2012) (on file with the author).

⁴⁰⁸ *Id.*

⁴⁰⁹ Letter from Steve Bartlett, President & CEO, Financial Services Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 8, 2012) (on file with the author).

⁴¹⁰ Letter from Thomas Donohue, President and CEO, U.S. Chamber of Commerce, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author).

⁴¹¹ Letter from Steve Bartlett, President & CEO, Financial Services Roundtable, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 8, 2012) (on file with the author).

⁴¹² *Id.*

⁴¹³ Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, (April 3, 2012) (to be codified at 12 C.F.R. pt 1310).

⁴¹⁴ Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, (April 3, 2012) (to be codified at 12 C.F.R. pt 1310).

involve financial activities, but the FRB has broad discretion in drafting this rule. As AFSA mentions, a SIFI designation “will have significant and far-reaching regulatory implications and costs, both in terms of time and resources, for nonbank financial companies.”⁴¹⁵ For this reason, AFSA implores the FSOC to exercise discretion when naming nonbank SIFIs, and hopes the FSOC “will provide companies with a meaningful opportunity to contest a proposed designation, including the right to an oral evidentiary hearing.”⁴¹⁶ The U.S. Chamber of Commerce has concerns this is not occurring because they contend that the FRB “has circumvented congressional intent and expanded the list of activities considered to be “financial activities.”⁴¹⁷

viii. Duplicative ATM Fee Disclosure Requirement

Automated Teller Machine (ATM) operators that impose fees on customers are required by the FRB to disclose this fee amount both electronically, on the ATM screen, and physically, on a placard placed on the outside of the ATM machine.⁴¹⁸ Respondents who recognize this duplicative condition in their letters overwhelmingly support the elimination of the physical placard fee notice requirement.⁴¹⁹ On July 9, 2012, the U.S. House of Representatives voted unanimously to pass H.R. 4367, a bill that would eliminate this duplicative ATM placard fee disclosure requirement.⁴²⁰ As of the release of this staff report, the companion version of this bill awaits action in the Senate.

Business groups are primarily concerned that litigation risks from this requirement far “outweigh any purported benefits to consumers.”⁴²¹ The relevant statute prescribes that, if the placard notices is not attached, plaintiffs are entitled to recover “the lesser of \$500,000 or 1 per cent of the net worth of the [ATM operator], plus attorneys’ fees and costs” in successful class action suits.⁴²² CUNA and ICBA have noted that this has led to situations where individuals remove affixed placards and file “spurious lawsuits.”⁴²³ From May 2010-April 2012, credit unions alone faced “over 100 such class action suits and the resources expended to fight these

⁴¹⁵ Letter from Bill Himpler, President, Executive Vice President, American Financial Services Association, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform (June 1, 2012) (on file with the author).

⁴¹⁶ *Id.*

⁴¹⁷ Letter from Thomas Donohue, President and CEO, U.S. Chamber of Commerce, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, p. 12, (June 1, 2012) (on file with the author).

⁴¹⁸ Electronic Fund Transfer Act, P.L. 111-209, §205.16.

⁴¹⁹ Letter from Bill Cheney, President & CEO, Credit Union National Association, Executive Director, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending (June 1, 2012) (on file with the author).

⁴²⁰ H.R. 4367, Amending the Electronic Fund Transfer Act to Limit the Fee Disclosure Requirement for an Automatic Teller Machine to the Screen of that Machine, 112th Cong., 2nd Session, (June 27, 2012).

⁴²¹ *Id.*

⁴²² Electronic Fund Transfer Act, P.L. 111-209, §205.16.

⁴²³ Letter from Bill Cheney, President & CEO, Credit Union National Association, Executive Director, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending (June 1, 2012) (on file with the author); Letter from Camden Fine, President & CEO, Independent Community Bankers of America, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending (June 1, 2012) (on file with the author).

suits “reduces available resources to their consumer-members.”⁴²⁴ Cardtronics, the leading ATM operator in the U.S., expressed similar concerns that “lawsuits are multiplying and harming ATM companies financially.”⁴²⁵

IV. Conclusion

This staff report is a continuation of the Committee’s dialogue with the American people about the Obama Administration’s regulations and policies that are seen by job creators as counterproductive to job growth and economic recovery. The feedback the Committee received demonstrates that the regulatory environment and the private sector are far from “doing fine.” As documented in the Committee’s preliminary staff report, and this staff report, a host of regulations, both old and new, are at the forefront of job creators’ concerns. It appears that the Obama Administration is going against its promise and promoting substantially more regulation than the “health, safety and security of the American people require.”⁴²⁶

⁴²⁴ Letter from Bill Cheney, President & CEO, Credit Union National Association, Executive Director, to Darrell Issa, Chairman, Comm. on Oversight & Gov’t Reform and Jim Jordan, Chairman, Subcom. on Reg. Affairs, Stimulus Oversight & Gov’t Spending (June 1, 2012) (on file with the author).

⁴²⁵ Oversight Staff Briefing with Mike Keller, General Counsel of Cardtronics, and associates, (Feb.9, 2012).

⁴²⁶ Office of the Press Secretary, The White House, Address by the President to a Joint Session of Congress (Sept. 2011).

APPENDIX

REGULATIONS BY AGENCY

COMMODITIES FUTURES TRADING COMMISSION			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Confirmation, Portfolio Reconciliation, and Portfolio Compression Requirements for Swap Dealers and Major Swap Participants 75 Fed. Reg. 81519 (proposed Dec. 28, 2010) (to be codified at 17 C.F.R. pt. 23): CFTC issued a proposed rule prescribing standards for swap dealers and major swap participants related to the confirmation, processing, netting, documentation, and valuation of swaps.	Commodity Markets Council	✓	✓
Registration of Swap Dealers and Major Swap Participants 77 Fed. Reg. 2613 (final rule Jan. 19, 2012) (to be codified at 17 C.F.R. pts. 1, 3, 23, 170): CFTC issued this final rule to establish a process for registering swap dealers and major swap participants and to require swap entities to become and remain members of the registered futures association (RFA).	ConocoPhillips	✓	
Position Limits for Futures and Swaps, 76 Fed. Reg. 71626 (final rule Nov. 18, 2011) (to be codified at 17 C.F.R. pts. 1, 150, 151): CFTC issued a final rule to establish position limits for twenty eight exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts.	Commodity Markets Council	✓	✓
	Independent Petroleum Association of America	✓	
Agricultural Commodity Definition, 75 Fed. Reg. 65586 (proposed Oct. 26, 2010) (to be codified at 17 C.F.R. pt. 1): CFTC issued a proposed rule to define “agricultural commodity” under the Commodity Exchange Act (CEA) as amended by Dodd-Frank.	Commodity Markets Council	✓	
Agricultural Swaps, 75 Fed. Reg. 59666 (proposed Sept. 28, 2010) (to be codified at 17 C.F.R. pt. 35): CFTC issued an advance notice of proposed rulemaking to request comment on the appropriate conditions, restrictions or protections to be included in a rule it must issue under Dodd-Frank governing the trading of agricultural swaps.	Commodity Markets Council	✓	
Antidisruptive Practices Authority, 75 Fed. Reg. 14943 (proposed March 18, 2011) (to be codified at 17 C.F.R. Chapter 1): CFTC issued an advance notice of proposed rulemaking to request comment on issuing rules necessary to prohibit trading practices deemed disruptive of fair and equitable trading.	Commodity Markets Council	✓	
Prohibition of Market Manipulation, 75 Fed. Reg. 67657 (proposed Nov. 3, 2010) (to be codified at 17 C.F.R. pt. 180): CFTC issued a proposed rule to implement new anti-manipulation authority as required by Dodd-Frank.	Commodity Markets Council	✓	
End User Exception to Mandatory Clearing of Swaps 75 Fed. Reg. 80747 (rule finalized on July 10, 2012,) (to be codified at 17 C.F.R. pt. 39): CFTC issued a proposed rule to provide new requirements governing the elective exception to the mandatory clearing of swaps for non-financial entities that enter into swaps to hedge or mitigate commercial risk.	American Express		✓
	American Financial Services Association		✓

	Business Roundtable		✓
	National Association of Manufacturers		✓
	U.S. Chamber of Commerce		✓
Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants 76 Fed. Reg. 23732 (proposed April 28, 2011) (to be codified at 17 C.F.R. pt. 23): CFTC issued a notice of proposed rulemaking to implement a new statutory framework that requires adoption of capital and initial and variation margin requirements for certain swap dealers and major swap participants.	American Financial Services Association		✓
	Business Roundtable		✓
	U.S. Chamber of Commerce		✓
Exclusion for Certain Otherwise Regulated Persons from the definition of the term “Commodity Pool Operator” (codified at 17 C.F.R. pt 4): CFTC issued this rule to eliminate the exemptions granted investment companies that utilize derivatives to manage their investment portfolios from having to register with the agency as a “commodity pool operator.”	U.S. Chamber of Commerce		✓
Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap Participant,” and “Eligible Contract Participant”, 77 Fed. Reg. 30596 (rule finalized on July 10, 2012): CFTC and SEC issued a rule further defining a series of terms related to the security-based swaps market, including “swap dealer,” “security-based swap dealer,” “major swap participant,” “major security-based swap participant” and “eligible contract participant.”	American Express	✓	✓
	Business Roundtable	✓	✓
	Commodity Markets Council	✓	✓
	ConocoPhillips	✓	✓
	Edison Electric Institute	✓	

CONSUMER FINANCIAL PROTECTION BUREAU			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
CFPB Structure and Oversight: Unlike other independent agencies, CFPB is directed by a single regulator, does not have congressional oversight through the normal budget process, has independent litigating authority, and may promulgate regulations impacting companies without determining the adequacy of existing state laws, among other things.	American Financial Services Association		✓
Overdraft Protection: CFPB launched an inquiry into checking account overdraft programs this year to determine how these practices are impacting consumers. CFPB will use input collected through this inquiry to assist with rulemaking on	Credit Union National Association		✓

overdraft practices.			
“Unfair,” Deceptive,” or “Abusive” (UDAAP) Designation: CFPB has broad authority over “unfair, deceptive, and abusive” practices (UDAAPs) that may impact consumers. Although the two former terms have established meanings in case law and regulations, “abusive” has no established definition.	Credit Union National Association		✓
Consumer Complaint Database: CFPB recently launched a searchable, publically available database that lists names of “covered persons” about whom consumers have complained, as required by Dodd-Frank §1034 (debt buyers are included).	Debt Buyers Association International		✓
Mortgage Reform and Anti-Predatory Lending Act: Title XIV of Dodd-Frank amends the Truth in Lending Act (TILA) to reform consumer mortgage practices and to provide certain minimum standards for consumer mortgage loans, and for other purposes.	American Financial Services Association		✓
Amendments to the Homeowners Equity Protection Act (HOEPA), Pub. Law. No 103- 325: § 1431 of Dodd-Frank adds high-cost mortgage triggers to HOEPA, the part of TILA that specifically governs “high-cost” mortgages.	Credit Union National Association		✓
	Manufacturing Housing Institute		✓
	National Association of Home Builders		✓
“Qualified Mortgage” Rule, 76 Fed. Reg. 27390 (proposed May 11, 2011) (to be codified at 12 C.F.R. pt 226): FRB proposed this rule, which will be finalized by CFPB, to establish a federal definition of a “qualified mortgage” that lenders will use to demonstrate a customer’s ability to afford a home.	American Financial Services Association		✓
	Credit Union National Association		✓
	Manufacturing Housing Institute		✓
	National Association of Home Builders		✓
	U.S. Chamber of Commerce		✓
Integrated Mortgage Disclosures under RESPA (Regulation X) and TILA (Regulation Z), (to be codified at 12 C.F.R. pts 1024 and 1026) (proposed July 9, 2012): CFPB published this proposed rule, and released model mortgage disclosure forms that integrate disclosure requirements of the Real Estate Settlement Procedures Act, or RESPA (Regulation X), and TILA (Regulation Z).	American Financial Services Association		✓
	American Land Title Association		✓
	Credit Union National Association		✓
Defining Larger Participants in Certain Consumer Financial Products and Services Markets, 77 Fed. Reg. 9592 (proposed Feb. 17, 2012) (to be codified at 12 C.F.R. pt 1090): CFPB proposed this rule, which includes consumer debt	Debt Buyers Association International		✓

collectors and consumer reporters in the definition of “larger participants” for the purpose of CFPB supervision.			
Electronic Fund Transfers (Regulation E), 77 Fed. Reg. 6194, (final rule Feb. 7, 2012) (codified at 12 C.F.R. pt 1005): CFPB proposed this rule to provide new protections, including disclosures and error resolution and cancellation rights to consumers who send remittance transfers to other consumers or businesses in a foreign country.	Credit Union National Association		✓
	Independent Community Bankers of America		✓
	U.S. Chamber of Commerce		✓
Procedural Rules to Establish Supervisory Persons Based on Risk Determination, 77 Fed. Reg. 31226 (proposed May 25, 2012) (to be codified at 12 C.F.R. pt 1091): CFPB proposed this rule, which sets forth the procedures by which it may subject a nonbank covered entity to its supervisory authority (i.e. bank-like examinations).	U.S. Chamber of Commerce		✓
Small Business Loan Data Collection Requirements: Dodd-Frank amends the Equal Credit Opportunity Act (Regulation B) to create a set of requirements for small business credit applicants. The provision requires lenders to ask credit applicants if the business is women or minority owned and whether it is a small business (< \$750,000 in annual sales).	Independent Community Bankers of America		✓
Prepaid Access/ Gift Card Regulation: CFPB released a request for comment on regulating prepaid access/gift cards with respect to consumer protection, transparency, and fees.	Retail Industry Leaders Association		✓
Enforcement of the Fair Debt Collection Practices Act (FDCPA), Pub. L. No. 109-351: §1022 of Dodd-Frank transfers FDCPA rulemaking authority from FTC to CFPB and grants CFPB rulemaking authority to prescribe rules “as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives” of the FDCPA. Both agencies have entered into a Memorandum of Understanding (MOU) to coordinate their respective enforcement activities.	DBA International	✓	✓
Conflicting Definition of “Mortgage Originator:” §1401 of Dodd-Frank adds a definition of “mortgage originator” within TILA that is potentially inconsistent with existing federal definitions, most notable the SAFE Act (P.L. 110-289).	Manufacturing Housing Institute		✓

CONSUMER PRODUCT SAFETY COMMISSION

REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Testing and Labeling Pertaining to Product Certification, 75 Fed. Reg. 28336 (proposed May 20, 2010) (to be codified at 16 C.F.R. pt. 1107): On May 20, 2010, CPSC proposed a rule that would establish requirements for compliance evaluations and continuing testing for children’s products.	International Sleep Products Association	✓	

American National Standard for Recreational Off-Highway Vehicles, ANSI/ROHVA 1-200X. Proposed Rule. 74 Fed Reg. 207 (to be codified at 14 CFR 39): Seeks to establish mandatory safety standards for new class of vehicles despite the absence of reliable data to guide the development of such standards. Aspects of the standards would include protective gear requirements, a roll-over protective structure and three-point seatbelt for each chair.	Association of Manufacturers		✓
Standard for Table Saws. Proposed Rule. 76 Fed. Reg. 62678 (to be codified at 16 CFR 11): In October 2011, the CPSC proposed a rule that would establish mandatory safety standards for table saws, requiring all newly manufactured table saws to have flesh-sensing technology.	Association of Manufacturers		✓
The Consumer Products Safety Improvement Act of 2008 Pub. L. No. 110-314: Specifies acceptable lead levels in children's products and requires third party testing to ensure that the standard is met. The CPSC has broadly interpreted the legislation to apply to any product that children might come in contact with.	Fashion Jewelry and Accessories Trade Association		✓
	Manufacturing Jewelers & Suppliers of America	✓	✓
	Motorcycle Industry Council	✓	
	National Council of Textile Organizations	✓	✓
	Non-Ferrous Founders Society		✓
Cadmium Petition: The Consumer Product Safety Commission is weighing whether to establish cadmium limits for manufacturers. Many companies that stopped using lead in their products have since replaced it with cadmium, which can also pose a health risk. There is concern that the standards may be unreasonably stringent	Fashion Jewelry and Accessories Trade Association		✓
	Manufacturing Jewelers and Suppliers of America		✓

CUSTOMS AND BORDER PROTECTION			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Import/Export Cargo Paperwork: 47 different agencies possess authority to request documentation before cargo can be imported or exported through a United States port.	Global Automakers		✓
	Toyota Motors North America, INC		✓
Illegal Entry of Textile and Apparel into U.S: Customs and Border Protection has failed to catch many importers engaging in fraudulent activity. Many foreign companies lie about where their product were made in order to pay low tariffs, thus cheating the U.S. government.	National Council of Textile Organizations		✓

DEPARTMENT OF AGRICULTURE			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
“Buy America” Policy	Bumble Bee Foods, LLC	✓	
	Construction Industry Roundtable		✓
Implementation of Regulations Required Under Title XI of the Food, Conservation and Energy Act of 2008 (Proposed) 75 Fed. Reg. 44163 (proposed July 28, 2010) (to be codified at 9 C.F.R. pt. 201): The Department of Agriculture (USDA), Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to add several new sections to the regulations under the Packers and Stockyards Act, 1921, as amended and supplemented (PS Act). A final rule was adopted in December 2011.	American Meat Institute	✓	
	Pork Producers Council	✓	
Plant Protection Act (PPA) of 2000 as part of the Agricultural Risk Protection Act: The PPA consolidates all or part of 10 existing USDA plant health laws into one comprehensive law, including the authority to regulate plants, plant products, certain biological control organisms, noxious weeds, and plant pests.	Agricultural Retailers Association		✓
	Biotechnology Industry Organization	✓	
U.S. Sugar Program	American Bakers Association	✓	✓
Frozen Food Level Pre-Approval Process: Food labels must be reviewed by the Food Service and Inspection Service before being marketed. The approval process may take as long as many months.	American Frozen Food Institute		✓
Restriction on Shiga Toxin-Producing E. Coli in Certain Raw Beef Products. 76 Fed. Reg. 58157 (to be codified at 9 CFR 416, 417, and 430) The Food Safety and Inspection Service established a rule barring all raw meats containing any trace of E.Coli (serogroups O26, O45, O103, O111, O121, and O145) from entering the market.	American Meat Institute		✓
Electronic Export Application and Certification Charge Proposed Rule. 77 Fed. Reg. 3159 (to be codified at 9 CFR 312, 322, 350, 362, 381, 590, 592): Would change the meat and poultry inspection regulation to create an electronic export application and certification system. The Food Safety and Inspection Service would charge users based on a formula, which would be updated annually.	American Meat Institute		✓
Common or Usual Name for Raw Meat and Poultry Products Containing Added Solutions Proposed Rule. 76 Fed. Reg. 44855 (to be codified at 9 CFR 319 and 381): Food Safety and Inspection Service proposed rule would establish common names for raw meat and poultry that contain added solutions. Meat and poultry packaging companies would be required to display the established language on their products.	American Meat Institute		✓
Food, Conservation, and Energy Act of 2008/The Farm Bill. Title IX. Established a broad definition for renewable biomass.	Composite Panel Association		✓
Food, Conservation, and Energy Act of 2008/ The Farm Bill. Section 8204: Amends the Lacey Act to protect a broader range of plants and plant products. Specifically, makes it illegal to import any plant product or plant without a declaration, including items	National Association of Home Builders		✓
	National Association of Manufacturers		✓

that contain only traces of plant materials.			
Agriculture Acquisition Regulation. 76 Fed Reg. 231 (to be codified at 48 CFR 422) Direct final rule withdrawn on February 6, 2012: Would have required USDA contractors to file paperwork confirming compliance with applicable labor laws.	U.S. Chamber of Commerce		✓

DEPARTMENT OF ENERGY			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
National Environmental Policy Act Implementing Procedures (Proposed) 76 Fed. Reg. 214 (proposed Jan. 3, 2011) (to be codified at 10 C.F.R. pt. 1021): The U.S. Department of Energy proposes to amend its existing regulations governing compliance with the National Environmental Policy Act (NEPA). The majority of the changes are proposed the categorical exclusions provisions contained in NEPA Implementing Procedures, with a small number of related changes proposed for other provisions.	Plumbing Manufacturers Institute	✓	
Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment. 76 Fed. Reg. 12,422. (final rule issued Mar. 7, 2011).	American Express		✓
	American Lighting Association		✓
	Business Roundtable		✓
	Consumer Electronics Association		✓
Energy Conservation Standards for Certain Ceiling Fan Light Kits. 72 Fed. Reg. 1,270. (final rule issued Jan. 11, 2007).	American Lighting Association		✓
Energy Conservation Program: Test Procedures for Television Sets. 77 Fed. Reg. 2,830. (notice of proposed rulemaking Jan. 19, 2012).	Consumer Electronics Association		✓
Energy Efficiency Standards for Manufactured Housing; 75 Fed. Reg. 7,556. (advanced notice of proposed rulemaking Feb. 22, 2010).	Manufactured Housing Institute		✓

DEPARTMENT OF HEALTH AND HUMAN SERVICES			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Accounting of Disclosures: Health Information Technology for Economic and Clinical Health (HITECH) Act	National Association of Chain Drug Stores	✓	
Centers for Medicare and Medicaid (CMS): Health IT Interim Final Rule	American Express	✓	
	Business Roundtable	✓	
Centers for Medicare and Medicaid (CMS): Medicare Provider Enrollment, Chain and Ownership System	National Association of Chain Drug Stores	✓	
Centers for Medicare and Medicaid (CMS): Medical Equipment and Supplies Competitive Bidding Medicare Modernization Act of 2003. Section 302. Durable Medical	National Association of Chain Drug Stores	✓	

Equipment Competitive Bidding Regulation: Competitive bidding program set up by Medicare so that prices are determined by supplier's bids rather than a traditional fee schedule.	Center for Regulatory Effectiveness		✓
Centers for Medicare and Medicaid (CMS): Medicare/Medicaid Recovery Audit Contractor (RAC) Program	American Hospital Association	✓	✓
Centers for Medicare and Medicaid (CMS): Clinical Laboratory Signature on Requisition	American Hospital Association	✓	
Centers for Medicare and Medicaid (CMS): Retiree Drug Subsidy under Patient Protection and Affordable Care Act (PPACA)	American Express	✓	
	Business Roundtable	✓	
The Civil Monetary Penalty Law. Section 1128A: Places restrictions on rewarding physicians for the quality of care they provide.	American Hospital Association	✓	✓
Employer Mandate: Patient Protection and Affordable Care Act (PPACA)	American Express	✓	
	Business Roundtable	✓	
	Small Business & Entrepreneurship Council	✓	
The Ethics in Patient Referrals Act. Section 1877 of the Social Security Act/Physician Self-Referral Law (The Stark Law): administered jointly with the Department of Justice: Mandates that physician compensation be set in advance and that they be paid by the hour. As a result, tying compensation to quality and care improvement would violate law.	American Hospital Association	✓	✓
Grandfathering Rule: Patient Protection and Affordable Care Act (PPACA)	American Express	✓	
	Business Roundtable	✓	
	Small Business & Entrepreneurship Council	✓	
Medical Loss Ratio Rule: Patient Protection and Affordable Care Act. Section 1251: Health insurance issuers must grant a rebate to all individuals whose health insurance issuer spends less than 85% of premiums (large group market) or 80% of premiums (small group market).	American Express	✓	
	Business Roundtable	✓	
	Small Business & Entrepreneurship Council	✓	
	U.S. Chamber of Commerce		✓
Regulation Abolishing "Mini-Medical" Plans: Patient Protection and Affordable Care Act (PPACA)	American Express	✓	
	Business Roundtable	✓	
	Small Business & Entrepreneurship Council	✓	
Patient Protection Affordable Care Act. Section 6002 "Sunshine Provisions": Establishes new requirements for processing and reporting pharmaceutical company payments to physicians. Also requires physicians to disclose investments and connections to the pharmaceutical industry.	Advanced Medical Technology Association		✓
	American Express		✓
	Business Roundtable		✓
Health Care and Education Reconciliation Act. Section 1405: Beginning in 2013, imposes a 2.3% excise tax on the first sale of medical devices.	Advanced Medical Technology Association		✓
Unique Device Identification. Proposed Rule.77 Fed. Reg. 40735 (to be codified at 21 CFR 16): Would require medical devices to have a unique identifier for tracking purposes.	Advanced Medical Technology Association		✓
Patient Protection and Affordable Care Act. Taxes on "Cadillac Plans"	American Express	✓	
	American Bakers Association Business Roundtable	✓	✓

Food Safety Modernization Act of 2010: Increases FDA’s regulatory authority over food handling and production	American Bakers Association		✓
	American Express		✓
	American Frozen Food Institute		✓
	Business Roundtable		✓
	International Bottled Water Association		✓
	Western Growers Association		✓
American Recovery and Reinvestment Act of 2009. Title VIII: CDC used portion of grant money to fund a project called “Communities Putting Prevention to Work,” which featured ads discouraging soft drink consumption.	American Beverage Association		✓
Medicare Secondary Payer. 77 Fed. Reg. 116 (to be codified at 42 CFR Part 411): Requires some insurers to be the primary payer for health care services for certain claims.	American Express		✓
	Business Roundtable		✓
HIPAA Privacy Rule: Gives individuals the right to find out who has electronically accessed their protected health information.	American Express		✓
	American Hospital Association		✓
	Business Roundtable		✓
Patient Protection and Affordable Care Act. Final Rule on Health Care Exchanges. 77 Fed. Reg. 59 (to be codified at 45 CFR 155, 156, and 157): Established “exchanges”--marketplaces where small employers and individuals can compare private health insurance options. Also, set specific guidelines for determining which insurance companies participate.	American Express		✓
	Business Roundtable		✓
	U.S. Chamber of Commerce		✓
Patient Protection and Affordable Care Act. Section 4205. FDA Nutrition Labeling of Foods. 75 Fed. Reg. 141. (to be codified at 21 CFR 101.10): Requires restaurants with more than twenty locations to list calorie content information on menus. Vending machine operators must display a sign near food items that inform the customer the calorie contents of items.	American Express		✓
	Business Roundtable		✓
Patient Protection and Affordable Care Act. Section 2705. HIPAA Wellness Program. Allows employers to continue rewarding employees for being in a wellness program. The value of these rewards can be increased by 30% of the cost of coverage after January 1, 2014.	American Express		✓
	Business Roundtable		✓
CMS Claims Data Rule. 76 Fed. Reg. 76541 (to be codified at 42 CFR 401): Established performance measures to rate organizations in order for CMS to determine whether or not they should receive claims data under Medicare Parts A, B, and D.	American Express		✓
	Business Roundtable		✓
Patient Protection and Affordable Care Act Actuarial Value Penalty: Subjects employers to a penalty if the employer-sponsored health plan they provide covers less than 60% actuarial value.	American Express		✓
	Business Roundtable		✓
Patient Protection and Affordable Care Act. Automatic Enrollment. Section 1511: Requires some employers with more than 200 full-time employees to place new employees in an employee-provided health plan.	American Express		✓
	Business Roundtable		✓
Patient Protection and Affordable Care Act. Section 2714: Individuals allowed to stay on their parent’s healthcare plan until the age of 26.	American Manufacturers Association		✓

Medicare and Medicaid Electronic Health Record Rules: Both CMS and the Office of the National Coordinator for Health Information Technology released differing rules to manage the program.	American Hospital Association		✓
Medicare and Medicaid Conditions for Participation for Hospitals and Critical Access Hospitals. 76 Fed. Reg. 65891 (to be codified at 42 CFR 482 and 485): Requires all hospitals to include a member of medical staff on the governing board. Also, prohibits multi-hospital systems from operating with a single medical staff.	American Hospital Association		✓
CMS Condition Code 44: Upon approval by the hospital's Utilization Review Committee, allows for a patient to be changed from inpatient to outpatient if patient does not meet CMS medical necessity requirements for inpatient care. Condition Code 44 is currently rarely used for short-term stays, as Utilization Review Committees tend not to be immediately available.	American Hospital Association		✓
Clinical Laboratory Improvement Act of 1988. Regulations. 65 Fed. Reg. 251 (to be codified at 42 CFR 493): CMS' Clinical Laboratory Improvement regulations impose severe penalties for minor infractions.	American Hospital Association		✓
Beneficiary Notices	American Hospital Association		✓
Patient Protection and Affordable Care Act	Associated Builders and Contractors		✓
Expectation of substance testing requirements	International Bottled Water Association		✓
FDA Guidance for Industry #209: The agency labeled some widely accepted uses for antibiotics on animals as "injudicious."	National Pork Producer Council		✓
Extra Label Antibiotics Ban. 73 Fed. Reg. 129. (to be codified at 21 CFR 530): FDA ban of extra-label use of cephalosporins on all animals.	National Pork Producer Council		✓
Expectation of FDA regulations on salt	Salt Institute		✓
Patient Protection Affordable Care Act. Benefit and Coverage Rule. 77 Fed. Reg. 8668 (to be codified at 26 CFR 54 and 602, 29 CFR 2590 and 45 CFR 147): Imposes new disclosure requirements on health insurance providers regarding available plans. Final rule effective April 2012.	U.S. Chamber of Commerce		✓
Patient Protection and Affordable Care Act. Essential Health Benefits Package December 16, 2011 Guidance Bulletin: Provides an outline of how states should implement PPACA. A rulemaking was never initiated and, therefore, implementation proposals were never reviewed by the public.	U.S. Chamber of Commerce		✓
Patient Protection and Affordable Care Act Seasonal Workers Guidelines: PPACA does not explicitly address whether employers with seasonal workers are required to provide these workers with health insurance.	Western Growers Association		✓

DEPARTMENT OF HOMELAND SECURITY			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Aircraft Repair Station Security, 74 Fed. Reg. 59874 (proposed Nov. 18, 2009) (to be codified at 49 C.F.R. pts. 1520 and 1554): Transportation Security Administration (TSA) is proposing a rule to codify the scope of its existing inspection program and to require regulated parties to allow TSA and Department of Homeland Security (DHS) officials to enter, inspect, and test property, facilities, and records relevant to repair stations. The proposed regulations also provide procedures for TSA to notify repair stations of any deficiencies in their security programs and to determine whether a particular repair station presents an immediate risk to security.	Aircraft Owners and Pilots Association	✓	
Maryland Three Airports: Enhanced Security Procedures at Certain Airports in the Washington, D.C., Area, 49 C.F.R. § 1562: TSA published an interim final rule (IFR) on February 10, 2005 (70 FR 7150), codified and transferred responsibility from the Federal Aviation Administration (FAA) to TSA for ground security requirements and procedures at three Maryland airports that are located within the Washington, DC, Metropolitan Area Flight Restricted Zone (Maryland Three Airports), and for individuals operating aircraft to or from these three airports.	Aircraft Owners and Pilots Association	✓	
Chemical Facility Anti-Terrorism Security as part of the Homeland Security Appropriations Act of 2007 (Section 550 of P.L. 109-295)(to be codified at 6 CFR 27): Set risk-based performance standards for security chemical facilities. All chemical facilities identified as high risk must craft and launch Site Security Plans unique to the vulnerabilities that particular facility faces.	Agricultural Retailers Association		✓
Personnel Surety Program 74 Fed. Reg. 110. Proposed Rule (to be codified at 5 CFR 1320.8): Would require companies to submit names to the Department of Homeland Security for review 48 hours before an individual can have full unescorted access to a chemical facility.	Agricultural Retailers Association		✓
	American Coatings Association		✓
	Institute of Makers of Explosives		✓
Homeland Security Appropriations Act of 2007 (Section 550 of P.L. 109-295). Chemicals of Interest Rule: The Department of Homeland Security interprets chemicals of interest to include all those chemicals with an active ingredient that has been identified by the Department.	Agricultural Retailers Association		✓
Chemical Facility Anti-Terrorism Security Act. Alternative Security Programs: All chemical facilities must abide by DHS Security programs despite existence of industry-created security programs.	Agricultural Retailers Association		✓
Chemical Facility Anti-Terrorism Security Act. Material Modification: Regulations do not allow for seasonal and emergency use of banned chemicals under the Chemical Facility Anti Terrorism Security Act that could otherwise be helpful.	Agricultural Retailers Association		✓
TSA Security Directive SD 08 F: Requires general aviation pilots to submit fingerprints and get an airport identification badge for each regular airport visit.	Aircraft Owners and Pilots Association		✓

Instruments of International Traffic Imported with Residue. Ruling H026715: Under the proposed rule, containers with residue at or above 7% of rail car capacity would be designated as regular loads for reporting purposes.	American Chemistry Council		✓
	Institute of Makers of Explosives		✓
L-1B/ “Specialized Knowledge” Visas 8 CFR 214.2 (h): Visa allows an employer to transfer an employee with “specialized knowledge” from a foreign office to a U.S. office. “Specialized knowledge” is undefined.	American Express		✓
	Business Roundtable		✓
Security Threat Assessments: Truck drivers must undergo redundant threat assessments and credentialing requirements.	American Trucking Association		✓
Ammonium Nitrate Security Program. Proposed Rule. 76 Fed. Reg. 46908 (to be codified at 6 CFR 31): Seeks to regulate sale and transfer of ammonium nitrate.	Institute of Makers of Explosives		✓
Chemicals of Interest Fuel Mixture Rule: Classifies gas as a chemical of interest, thus making it potentially subject to regulation.	International Liquid Terminal Association		✓
Changes to the In-Bond Process. 77 Fed. Reg. 35. Proposed Rule (to be codified at 19 CFR 4): Would replace the paper in-bond application with an electronic version. The new application will ask for more information than previously requested. Also reduces the maximum transit time of 60 days to 30 days.	National Association of Manufacturers		✓
Cold War Era Export Control Regulations: Current regulations do not reflect needs for national security and technological advancements.	National Association of Manufacturers		✓
New I-9 Form (to be codified at 8 CFR Part 274a): Updated the I-9 Form.	U.S. Chamber of Commerce		✓
Process for Issuing the New I-94 Card: U.S. Customs and Border Protection did not issue a Notice of Proposed Rulemaking, but simply announced the new system.	U.S. Chamber of Commerce		✓

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
HUD Rule on Obtaining Mortgages and Settlement Costs as part of the Real Estate Settlement Procedures Act (RESPA). 73 Fed. Reg. 222.(to be codified at 24 CFR Parts 203 and 3500): Requires disclosure for certain mortgage settlement expenses for federally supported mortgage loans to consumers.	American Land Title Association		✓
HUD Quality Assurance and Safety Standards for Manufactured Homes: The U.S. Department of Housing and Urban Development HUD (through its administration of the HUD Code (the Manufactured Housing Construction and Safety Standards Act, 42 U.S.C 5401 et seq.) has set quality assurance and safety standards for manufactured homes.	Manufactured Housing Institute		✓
Manufactured Housing and Improvement Act of 2000: Established the Manufactured Housing Consensus Committee, an advisory committee, to improve HUD rules regarding regulations impacting manufactured housing industry. However, MHCC recommendations are often ineffective due to HUDs rulemaking procedures, a lengthy internal review process and failure to fill	Manufactured Housing Institute		✓

vacancies on MHCC.			
HUD, Preferred Providers for REO Transactions: The policy of the U.S. Department of Housing and Urban Development (HUD) is that buyers of homes owned by HUD, as a result of a foreclosure of a Federal Housing Administration insured mortgage, are forced to close their transaction through a HUD preferred provider settlement agent.	American Land Title Association		✓

DEPARTMENT OF THE INTERIOR			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Backlog of applications for Deepwater Offshore Drilling Permits	American Express		✓
	Business Roundtable		✓
Well Simulation, Including Hydraulic Fracturing on Federal and Indian Lands. Proposed Rule. 53 Fed. Reg. 223 (to be codified at 43 CFR 3160): Proposed rule would regulate hydraulic fracturing on public land and Indian land, including the contents of flowback water and would require the disclosure of drilling techniques.	Conoco Phillips, INC		✓
	Independent Petroleum Association of America		✓
	National Association of Manufacturers		✓
BLM Inspection Fee. The BLM charges an inspection fee to companies with oil and gas leases.	Conoco Phillips, INC		✓
Drilling Safety Rule 73 Fed Reg. 4911 (to be codified at 30 CFR 250): Rule became effective in 2010. Regulates drilling fluids and review usage of Blowout Preventers.	Conoco Phillips, INC		✓
Safety and Environmental Systems Rule 76 Fed. Reg. 56683 (to be codified at 30 CFR Part 250 Subpart S): Rule became effective in 2010. Requires all operators in the Outer Continental Shelf to develop safety and environmental management plans.	Conoco Phillips, INC		✓
Worst Case Discharge Calculations (to be codified at 49 CFR 194.105): Requires operators to estimate how much oil would leak from a pipeline based on a “worst case” situation.	Conoco Phillips, INC		✓
Bureau of Ocean Energy Management 2012 Oil Shale and Tar Sand Programmatic Environmental Impact Statement. Proposal to amend 10 land use plans in the western U.S. to determine which areas will be open and closed to commercial use for oil shale and tar sand resources. Additionally, the agency refused to release public comment on the PEIS.	Center for Regulatory Effectiveness		✓
Stream Protection Rule (SPR): Proposed Rule Fall 2012. Restricts surface and underground coal mining in and around streams.	National Mining Association		✓

DEPARTMENT OF LABOR/MISC. LABOR POLICIES

REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Administration “High Road” Government Contracting Policy: The February 2010 Annual Report of the White House Task Force on the Middle Class announced it is exploring a government contacting policy that would take into account the records of the firms who receive government contracts and the quality of the jobs they create.	Associated Builders and Contractors, Inc.	✓	
	Associated General Contractors	✓	
	Small Business & Entrepreneurship Council	✓	
Administration Use of Project Labor Agreements for Federal Construction Projects (E.O. 13502) and 48 C.F.R. § 536.271 (2010): On February 13, 2009, President Obama issued an Executive Order to encourage the use of project labor agreements for large-scale federal construction projects. In April 2010, the Department of Defense, General Services Administration, and National Aeronautics and Space Administration issued a final rule implementing the Executive Order.	Associated Builders and Contractors, Inc.	✓	✓
	Associated General Contractors	✓	
	Construction Industry Round Table	✓	✓
	Small Business & Entrepreneurship Council	✓	
U.S. Chamber of Commerce			✓
DOL’s Lack of Clarity in Job Duties used for Wage Determinations under the Davis-Bacon Act: Currently, DOL provides wage determination lists for several different classifications of workers, but only limited information is provided about the job duties or union work rules that correspond to those classifications.	Associated Builders and Contractors, Inc.	✓	
DOL Persuader Agreements: Employer and Labor Relations Consultant Reporting Under the Labor-Management Reporting and Disclosure Act (LMRDA): On June 21, 2011, the U.S. Department of Labor’s (DOL) Office of Labor-Management Standards proposed a rule to revise its reporting requirements for employer and consultant “persuader activity” under the Labor Management Reporting and Disclosure Act (LMRDA).	Associated Builders and Contractors	✓	✓
	Brick Industry Association		✓
	Little Mendelson		✓
	Motor & Equipment Manufacturers Association		✓
	National Association of Manufacturers		✓
	National Federation of Independent Business		✓
	Retail Industry Leaders Association		✓
	U.S. Chamber of Commerce		
DOL Right to Know under the Fair Labor Standards Act (FLSA) (Potential): In the fall of 2010, the Wage and Hour Division (WHD) announced they are considering a proposed rule that would require covered employers to notify their employees of their rights under the FLSA and to provide information about hours worked and wage computation.	American Bakers Association	✓	
	Associated Builders and Contractors, Inc.	✓	
	National Federation of Independent Business	✓	
	Printing Industries of America		✓
DOL Wage Rates Under the Davis-Bacon Act: The Wage and Hour Division (WHD) sets “prevailing wages” based on wages paid to various laborers and mechanics employed on construction projects.	Associated Builders and Contractors, Inc.	✓	
Employee Benefits Security Administration (EBSA) Definition of the Term “Fiduciary” 75 Fed. Reg. 2142 (proposed Oct. 22, 2010): The EBSA issued a proposed rule to expand the definition of “fiduciary” under the	Financial Services Forum (note this concern may not reflect the entire membership of the Forum)	✓	✓

Employee Retirement Income Security Act (ERISA).	Business Roundtable U.S. Chamber of Commerce		✓
OSHA Backing Operations (Potential): In the fall of 2010, OSHA announced it is considering proposing a rule to regulate the backing operations of construction equipment.	Associated General Contractors	✓	
OSHA Building Inspectors Partnership (pilot program) : In May 2010, OSHA announced it is launching a pilot program to partner with local building inspectors in select American cities to monitor working conditions.	Associated General Contractors	✓	
OSHA Combustible Dust, 74 Fed. Reg. 54334 (proposed Oct. 21, 2009) (to be codified at 29 C.F.R. pt. 1910) : OSHA issued an advanced notice of proposed rulemaking to develop a proposed standard for combustible dust management. OSHA has determined combustible dust to include “all combustible particulate solids of any size, shape, or chemical composition that could present a fire or deflagration hazard when suspended in air or other oxidizing medium.”	American Chemistry Council		✓
	American Forest and Paper Association	✓	✓
	American Iron and Steel Institute	✓	
	American Wire Producers Association	✓	✓
	APA - The Engineered Wood Association	✓	
	Kitchen Cabinet Manufacturers Association	✓	
	National Lumber & Building Material Dealers Association	✓	
	National Oilseed Processors Association	✓	
	Non-Ferrous Founders' Society	✓	✓
	Society of Plastics Industry	✓	
OSHA Consultation Agreements: Proposed Changes to Consultation Procedures, 75 Fed. Reg. 54064 (proposed Sept. 3, 2010) (to be codified at 29 C.F.R. pt. 1908) : OSHA issued a proposed rule to clarify the Assistant Secretary’s ability to identify sites to be inspected, regardless of their Safety and Health Achievement and Recognition Programs (SHARP) status. The proposal also permits OSHA compliance officers to proceed with enforcement visits due to referrals from sites undergoing consultation visits or sites that have attained SHARP status. Finally, the proposal limits the deletion period from OSHA’s programmed inspection schedule for those employers that participate in the SHARP program.	American Coatings Association	✓	
	American Iron and Steel Institute	✓	
	Associated General Contractors	✓	
	International Bottled Water Association	✓	
	Metal Treating Institute	✓	
	Motor and Equipment Manufacturers Association	✓	
	National Association of Manufacturers	✓	
	National Federation of Independent Business	✓	
	Society of Plastics Industry	✓	
	Textile Rental Services Association	✓	
OSHA Cranes and Derricks in Construction, 29 C.F.R. § 1926 (2010) : OSHA issued a final rule to update and specify industry work practices to help ensure employee safety during the use of cranes and derrick in construction projects. The rule took effect on November 8, 2010.	Association of Equipment Manufacturers	✓	
OSHA Injury & Illness Prevention Program (“I2P2”) 75 Fed. Reg. 23637 (announced May 4, 2010) (to be codified at C.F.R. pt. 1910): OSHA announced it was conducting stakeholder meetings to develop a proposed rule to implement an Injury and Illness Prevention Program. The proposed rule is likely to address how to	American Coatings Association	✓	
	American Forest and Paper Association		✓
	American Iron and Steel Institute	✓	
	Associated Builders and Contractors, Inc.	✓	✓

<p>plan, implement, evaluate, and improve processes and activities that protect employee safety and health. It is unclear if the rule will be proposed prior to the 2012 election.</p>	Associated General Contractors	✓	
	Metal Treating Institute	✓	
	Motor and Equipment Manufacturers Association	✓	
	National Association of Manufacturers	✓	
	National Federation of Independent Business	✓	✓
	National Lumber & Building Material Dealers Association	✓	
	National Oilseed Processors Association	✓	
	Small Business & Entrepreneurship Council	✓	
	Society of Plastics Industry	✓	
	Textile Rental Services Association	✓	
<p>OSHA Interpretation of Provisions for Feasible Administrative or Engineering Controls of Occupational Noise 75 Fed. Reg. 64216 (proposed Oct. 19, 2010) (to be codified at 29 C.F.R. pt. 1910, 1926): OSHA issued a proposed interpretation of the term “feasible administrative or engineering controls” to clarify that the term “feasible” means capable of being done. On January 19th, 2011, OSHA announced it was withdrawing its proposed interpretation.</p>	American Coatings Association	✓	
	American Coke and Coal Chemicals Institute	✓	
	American Forest and Paper Association	✓	
	American Iron and Steel Institute	✓	
	APA - The Engineered Wood Association	✓	
	Associated Builders and Contractors, Inc.	✓	
	Associated General Contractors	✓	
	Association of Equipment Manufacturers	✓	
	Boeing	✓	
	Conoco-Phillips, Inc	✓	
	Forging Industry Association	✓	
	International Bottled Water Association	✓	
	Kitchen Cabinet Manufacturers Association	✓	
	Metal Treating Institute	✓	
	Motor and Equipment Manufacturers Association	✓	
	National Association of Manufacturers	✓	
	National Concrete Masonry Association	✓	
	National Council of Textile Organizations	✓	
	National Federation of Independent Business	✓	
	National Lumber & Building Material Dealers Association	✓	
	National Oilseed Processors Association	✓	
	National Tooling and Machining Association	✓	
	Non-Ferrous Founders' Society	✓	✓

	Precision Machined Products Association	✓	
	Precision Metalforming Association	✓	
	Roaring Springs Water	✓	
	Small Business & Entrepreneurship Council	✓	
	Society of Plastics Industry	✓	
	Textile Rental Services Association	✓	
	Window & Door Manufacturers Association	✓	
	U.S. Chamber of Commerce		✓
OSHA Lockout Procedure Guidance: In 2008, OSHA issued a compliance directive to make clear that efforts to label die or tool changes as “routine, repetitive and integral to the production operation” and therefore not subject to lockout would be rejected.	National Tooling and Machining Association	✓	
	Precision Machined Products Association	✓	
	Precision Metalforming Association	✓	
OSHA Occupational Exposure to Crystalline Silica (Potential): In the fall of 2010, OSHA announced it intends to pursue a new comprehensive standard for crystalline silica to require provisions for methods of compliance, exposure monitoring, worker training, and medical surveillance. On February 14, 2011, OSHA sent its proposed rule to OMB for review.	Associated Builders and Contractors		✓
	Associated General Contractors	✓	
	Business Roundtable		✓
	Interlocking Concrete Pavement Institute	✓	✓
	National Association of Manufacturers		✓
	National Concrete Masonry Association	✓	
	National Stone, Sand and Gravel Association		✓
	Non-Ferrous Founders’ Society		✓
	Portland Cement Association		✓
OSHA Occupational Injury and Illness Recording and Reporting Requirements, 75 Fed. Reg. 4728 (proposed Jan. 29, 2010) (to be codified at 29 C.F.R. pt. 1904): OSHA issued a proposed rule to add a column to the OSHA 300 Log that would require employers to record work-related musculoskeletal disorders (MSD). On January 25, 2011, OSHA announced it was temporarily withdrawing its proposed rule to seek further input from small business. However, OSHA reopened the public comment period in May 2011.	American Coke and Coal Chemicals Institute	✓	
	American Iron and Steel Institute	✓	
	Associated Builders and Contractors, Inc.	✓	
	Associated General Contractors	✓	
	Automotive Aftermarket Industry Association	✓	
	Business Roundtable		✓
	Metal Treating Institute	✓	
	National Federation of Independent Business	✓	
	National Oilseed Processors Association	✓	
	National Stone, Sand and Gravel Association		✓
	Non-Ferrous Founders' Society	✓	✓
	Society of Chemical Manufacturers and Affiliates	✓	
	Society of Plastics Industry	✓	
	U.S. Chamber of Commerce		✓
OSHA Permissible Exposure Limit (PEL): In August	American Iron and Steel Institute	✓	

2010, OSHA announced it plans to conduct a comprehensive review of chemicals that should be subject to PELs.	Metal Treating Institute	✓	
OSHA Policy Change to Penalty Structure: OSHA is currently implementing multiple changes to its administrative penalty calculation system that will impact final penalties issued to employers for OSHA violations.	Associated General Contractors	✓	
OSHA Safety Signs: Current safety sign regulations are based on outdated standards.	National Electrical Manufacturers Association	✓	
OSHA Severe Violator Enforcement Program (SVEP): In June 2010, OSHA established enforcement policies and procedures for the SVEP to replace OSHA's Enhanced Enforcement Program (EEP).	Non-Ferrous Founders' Society	✓	
DOL Visa Regulations On Temporary, Lesser Skilled Workers And Retention (H-2B Visa): DOL has finalized a new rule establishing a changed wage methodology for temporary, nonagricultural workers without college degrees (H-2B visas) that eliminates the "prevailing wage" standard and instead imposes an obligation for employers to pay the greater of the government wage survey or a collective bargaining agreement wage, regardless of whether the employer is covered by these acts or a collective bargaining agreement. DOL also finalized a companion new rule amending all aspects of the H-2B program and processing requirements. A disagreement over DOL's compliance with the Regulatory Flexibility Act and the DOL's authority to issue the regulation were the basis for the challenge filed by the U.S. Chamber in U.S. District Court for the Northern District of Florida which granted a preliminary injunction in April 2012 blocking the regulation from going into effect. DOL's H-2B regulations have also been blocked by Congress for FY2012.	Brick Industry Association		✓
	U.S. Chamber of Commerce		✓
MSHA Explosives Regulations do not reflect modern industry standards and current technology: MSHA's metal and non-metal explosives regulations were last revised in the early 1990s and reflect late 1980s technology. Because the regulations are so outdated, MSHA issues citations for things that are insignificant while significant safety and security issues are not citable.	Institute of Makers of Explosives		✓
MSHA Citations Issued Before Industry is Given Notice of Rule Changes: MSHA by law (The Federal Mine Safety & Health Act of 1977) is required to inspect all mines (surface operations) two times every year; underground mines are required to be inspected four times every year. Inspectors in the field may be newly assigned to a mining sector, or inspectors may just have been assigned to a new territory, and decide to interpret a standard differently than previous MSHA inspectors had used.	National Stone, Sand, & Gravel Association		✓
MSHA Increased Inspections for Accountability: MSHA recently decided to increase reliance on accountability teams to double-check inspector performance leading to a fifty percent increase in citations.	National Stone, Sand, & Gravel Association		✓
MSHA Use of Program Policy Letters In Lieu of APA Consistent Rulemaking	National Stone, Sand, & Gravel Association		✓

MSHA Pattern of Violation Rule	Portland Cement Association		✓
DOL's Wage and Hour Division Proposed Regulation Regarding Farm Employment of Minors: On April 27, 2012, withdrew a proposed regulation regarding farm employment of minors. The discontinued rule would have amended existing FLSA child labor regulations and incorporated them into enforcement policies aimed at imposing steep civil money penalties at farmers for child labor violations. There is concern from industry that the issue will come up again.	Agricultural Retailers Association		✓
DOL's Wage and Hour Division Application of the FLSA to Domestic Service: DOL has proposed that third-party employers pay minimum wage and overtime to home care workers. Expanding the coverage of the FLSA to these workers will significantly increase the cost of in-home companion care.	National Federation of Independent Business		✓
DOL and PBGC Changes to Defined Benefit Pension Plans: The <i>Pension Protection Act of 2006</i> , Publ.L. 109-280, made significant changes to the funding requirements for defined benefit pension plans, as well as changes that affected most other types of pensions. The law also placed certain restrictions on changes to pension plans that would increase their benefits without funding changes. DOL and the PBGC have been issuing regulations and guidance with regard to these requirements, including some that remain underway.	Business Roundtable		✓
OSHA Residential Construction Fall Protection Regulation: In December 2010, OSHA changed its residential construction fall protection regulation rescinding its Interim Fall Protection Guidelines, which set out a temporary policy that allowed employers engaged in certain residential construction activities to use alternative procedures instead of conventional fall protection, such as guardrail systems, safety net systems, or personal fall arrest systems, for any work that is conducted 6 feet or more above lower levels.	National Association of Home Builders		✓
OSHA National Emphasis Program (NEP) for Primary Metal Industries: In June 2011, OSHA issued a new directive establishing a NEP for the Primary Metals Industries, however, employers are already subject to existing NEPs for Hexavalent Chromium, Recordkeeping, Lead, Combustible Dust, and Crystalline Silica.	Non-Ferrous Founders' Society		✓
OSHA Employer Safety Incentive and Disincentive Policies and Practices: In March 2012, OSHA release guidance intended to protect employee whistleblowers who report workplace injury or illness.	National Tooling and Machining Association		✓
	Precision Machined Products Association		✓
	Precision Metalforming Association		✓

<p>OSHA Hazard Communication Rule: In March 2012, OSHA finalized a rule aligning the U.S. Hazard Communication Standard with the U.N. Globally Harmonized System of Classification and the Labeling of Chemicals (GHS). OSHA created a new term, “hazard not otherwise classified,” that is not in the current GHS. Also, OSHA has classified “combustible dust,” as a hazardous chemical even though it does not yet have a formal definition through rulemaking or GHS and there is a separate rulemaking regulating combustible dust.</p>	<p>National Association of Manufacturers National Oilseed Producers Association Non-Ferrous Founders’ Society U.S. Chamber of Commerce</p>		<p>✓ ✓ ✓ ✓ ✓</p>
<p>OFCCP Compensation, Data Collection, and Analysis Regulations and Guidance: Through three separate but related initiatives, the OFCCP has proposed doing away with transparency in how the agency will assess whether systemic compensation discrimination has occurred. It is also embarking on an effort to collect massive amounts of individually identifiable pay and benefits data. These initiatives consist of 1) a planned rescission of compensation discrimination guidelines that the OFCCP finalized in 2006; 2) proposed changes to OFCCP’s “scheduling letter and itemized listing” form used at the initial stage of a compliance review; and 3) plans, as evidenced through an advanced notice of proposed rulemaking, to implement a tremendously burdensome compensation data collection tool.</p>	<p>American Meat Institute U.S. Chamber of Commerce</p>		<p>✓ ✓</p>
<p>The Office of Federal Contract Compliance Programs (OFCCP) is proposing to revise the regulations implementing the non-discrimination and affirmative action regulations of section 503 of the Rehabilitation Act of 1973, as amended. The proposed regulations detail specific actions a contractor must take to satisfy its obligations. They would also increase the contractor's data collection obligations, and establish a utilization goal for individuals with disabilities to assist in measuring the effectiveness of the contractor's affirmative action efforts. Revision of the non-discrimination provisions to implement changes necessitated by the passage of the ADA Amendments Act (ADAAA) of 2008 is also proposed.</p>	<p>Associated Builders & Contractors Associated General Contractors of America Business Roundtable Construction Industry Round Table National Association of Manufacturers U.S. Chamber of Commerce</p>		<p>✓ ✓ ✓ ✓ ✓ ✓</p>

DEPARTMENT OF TRANSPORTATION			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
<p>Hours of Service 75 Fed. Reg. 82170 (proposed Dec. 29, 2010) (to be codified at 49 C.F.R. pt. 385, 386, 390, 395): The Hours-of-Service regulations put limits in place for when and how long commercial motor vehicle (CMV) drivers may drive. A final rule was issued in December 2011 that is currently under court challenge.</p>	<p>Agricultural Retailers Association</p>		<p>✓</p>
	<p>American Bakers Association</p>	<p>✓</p>	<p>✓</p>
	<p>American Road and Transportation Builders Association</p>		<p>✓</p>
	<p>Grocery Manufacturers Association</p>	<p>✓</p>	
	<p>Metal Treating Institute</p>	<p>✓</p>	

	National Association of Manufacturers	✓	✓
DOT Proposed Rule on Transportation of Lithium Batteries 75 Fed. Reg. 1302 (proposed Jan. 11, 2010) (to be codified at 49 C.F.R. pt. 172, 173, 175): Unless excepted by specific provisions, Lithium batteries must be approved for commercial transportation by PHMSA's Associate Administrator for Hazardous Materials Safety.	Airlines for America	✓	
	CTIA-The Wireless Association	✓	
	National Association of Manufacturers	✓	✓
	Metal Treating Institute	✓	
	National Electric Manufacturers Association	✓	
Cargo Capacity Labeling Rule or Part 571.110: Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less 49 C.R.F. §571.110 (2003): This standard specifies requirements for tire selection to prevent tire overloading and for motor home/recreation vehicle trailer load carrying capacity information.	American Express		✓
	National Automobile Dealers Association	✓	
	Business Roundtable		✓
FAA: Flightcrew Member Duty and Rest Requirements, 75 Fed. Reg. 63424 (proposed Oct. 15, 2010) (to be codified at 14 C.F.R. pt. 117, 121): Imposes duty-time limitations and rest requirements for Part 121 carriers. The proposal would limit the daily flight-duty period to 13 hours, which could slide to nine hours at night (depending on takeoff time and number of segments scheduled). Current rules allow for a 16-hour duty period between rest periods. The proposed rule defines “flight duty” as the period of time when a pilot reports for duty with the intention of flying an aircraft, operating a simulator or operating a flight-training device. A pilot’s entire duty period can include both “flight duty” and other tasks that do not involve flight time, such as record keeping and ground training.	Airlines for America	✓	✓
Hazardous Materials Transportation Special Permit Program, 76 Fed. Reg. 454 (proposed Jan. 5, 2011) (to be codified at 49 C.F.R. pt. 105, 106, 171): The Pipeline and Hazardous Materials Safety Administration is revising its procedures for applying for a special permit to require an applicant to provide sufficient information about its operations to enable the agency to evaluate the applicant's fitness and the safety impact of operations that would be authorized in the special permit. In addition, PHMSA is providing an on-line application option.	Agricultural Retailers Association	✓	✓
	Institute of Makers of Explosives		✓
	Motor and Equipment Manufacturers Association	✓	
Hours of Service; Limited Exemption for the Distribution of Anhydrous Ammonia in Agricultural Operations, 75 Fed. Reg. 40765 (proposed July 14, 2010) (to be codified at 49 C.F.R. pt. 395): This proposal grants a 2-year, limited exemption from the Federal hours-of-service regulations for the transportation of anhydrous ammonia from any distribution point to a local farm retailer or to the ultimate consumer, and from a local farm retailer to the ultimate consumer, as long as the transportation takes place within a 100 air-mile radius of the retail or wholesale distribution point. This exemption would extend the agricultural operations exemption established by section 345 of	Agricultural Retailers Association	✓	

the National Highway System Designation Act of 1995, as amended, by the sections 4115 and 4130 of the Safe, Accountable, Flexible, Efficient Transportation Equity: A Legacy for Users (SAFETEA-LU) to certain drivers and motor carriers engaged in the distribution of anhydrous ammonia during the planting and harvesting seasons, as defined by the States in which the carriers and drivers operate.			
Duplicative Commercial Drivers License Background Checks & Credentialing: Carriers transporting hazardous materials must pay for multiple credentials and background checks because the Department of Transportation has not preempted state and local regulations to create uniform identification and paperwork requirements.	Agricultural Retailers Association		✓
FAA Pilot Certification Requirements for Air Carrier Operations. (to be codified at 14 C.F.R. 61): Requires new pilots to carry a pilot certificate with a photo in order to be able to fly.	Aircraft Owners and Pilots Association		✓
Advance Information on Private Aircraft Arriving and Departing U.S. 73 Fed. Reg. 68295 (to be codified at 8 C.F.R. 122): Requires all private aircrafts departing from and arriving in the U.S. to provide manifest information about every individual to U.S. Customs and Border Protection. Also requires pilots to submit a notice of arrival and notice of departure.	Aircraft Owners and Pilots Association		✓
Re-registration and Renewal of Aircraft Registration: The FAA allowed the Aircraft Registry to degrade overtime and is now placing the burden on pilots to comply.	Aircraft Owners and Pilots Association		✓
Tarmac Delay Rules 74 Fed. Reg. 249 (to be codified at 14 CFR 259): Requires air carriers to develop contingency plans for lengthy tarmac delays and to inform passengers of those plans by posting the details on their website. Airlines must offer passengers the opportunity to exit the plane if three hours have passed since leaving the gate and the plane has yet to take off or otherwise be subjected to a fine.	Airlines for America		✓
Full Fare Price Advertising Requirements. 76 Fed. Reg. 78145 (to be codified at 14 C.F.R. 399): The price air carriers advertise for tickets must be the full cost, including taxes.	Airlines for America		✓
Pilot Certification and Qualification Requirements for Air Carrier Operations. Proposed Rule. 77 Fed. Reg. 12374 (to be codified at 14 C.F.R. 61, 121,135, 141, and 142): Would make co-pilots obtain an AirlineTransport Pilot Certificate, which requires 1500 hours of pilot time. Currently, co-pilots are only required to hold a commercial pilot certificate, which needs 250 hours of flight time.	Airlines for America		✓
Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers. Proposed Rule. 76 Fed Reg. 98. (to be codified at 14 CFR 65, 119, 121) : Adds flight simulation training to traditional flight safety training.	Airlines for America		✓
FAA Fuel Inerting Rule. 73 Fed. Reg. 42444. (to be codified at 14 C.F.R. 25, 26, 121, 125, and 129): Would require new production aircrafts to be retrofitted to add inerting systems despite evidence that suggests these systems are not necessary to enhance safety.	Airlines for America		✓

Reporting of Ancillary Airline Passenger Proposed Rule. 76 Fed. Reg. 41726 (to be codified at 14 C.F.R. 234 and 241): The Department of Transportation would like to request more information on airline imposed fees, such as the cost of checking in bags and meals.	Airlines for America		✓
NHTSA Standardization of Keyless Ignition Systems and Revisions of Standards for Accelerator Control Systems. Proposed Rule. 77 Fed. Reg 15351 (to be codified at 49 CFR 571)	Alliance of Automobile Manufacturers		✓
FMCSA Amends 49 CFR 383.5 to Change Definition of Tank Vehicle: Broadens definition to include certain commercial vehicle designed to transport gaseous or liquid. Drivers of these “tanks” are subjected to increased testing.	American Coatings Association		✓
	American Trucking Association		✓
Regulatory Action Leading to Higher Freight Rates	American Hardware Manufacturers Association		✓
Disadvantaged Business Enterprise Program. 76 Fed. Reg. 5083 (to be codified at 49 CFR 26 and 49 CFR 23): The program provides funds to state highway, transit and airport agencies.	American Road and Transportation Builders Association		✓
	Construction Industry Roundtable		✓
“Buy America” provision of the Surface Transportation Assistance Act of 1982. Section 165. 23 CFR 635.410 and 49 CFR 661): Requires federal agencies to purchase American made products that can be reasonably procured for mass transit projects.	American Road and Transportation Builders Association		✓
	Bumble Bee Foods, LLC	✓	
	Construction Industry Roundtable		✓
Rule for Filing Driver Medical Certificates (to be codified as 49 CFR 391): Requires commercial truck drivers to submit a copy of their biennial medical certification to the state agency that issued their Commercial Drivers License.	American Trucking Association		✓
PHMSA Cargo Tank Wetlines Regulation. Proposed Rule (to be codified at 49 CFR 173): Would prohibit cargo tank truck drivers from transporting flammable liquid in unprotected external product piping known as “wetlines.”	American Trucking Association		✓
FMCSA Drivers’ Motor Vehicle Record: Requires each trucking company to review every driver’s motor vehicle record annually to ensure that they are safe and qualified to continue driving despite the fact that many trucking companies review their drivers’ record anyway every time they receive a driving violation.	American Trucking Association		✓
FMCSA’s 2010 Compliance, Safety, Accountability Program: Grades trucking companies based on inspection and crash data.	American Trucking Association		✓
	Owner-Operator Independent Drivers Association		✓
	Business Coalition for Fair Competition		✓

FMCSA Motor Carrier Safety Fitness Determination: Expectation of proposed rule in 2012 for judging safety for motor carriers.	American Express		✓
	Business Roundtable		✓
Minimum Training Requirements for Entry Level Commercial Motor Vehicle Operations. Proposed Rule. 72 Fed. Reg. 73226. (to be codified at 49 CFR 380, 383, and 384): Would require behind the wheel and classroom training for individuals with commercial driver's licenses who want to operate commercial motor vehicles.	American Express		✓
	Business Roundtable		✓
FMCSA Hazardous Materials Safety Permit Program 72 Fed. Reg. 62795 (to be codified at 49 CFR 385): This 2007 final rule requires carriers have a "satisfactory" safety rating, be registered with the PHMSA, and provide evidence of an adequate security plan in order to receive a permit.	Institute for Makers of Explosives		✓
FMCSA Electronic On-Board Recorder Mandate 75 Fed. Reg. (to be codified at 49 CFR 350, 385, 395 and 396): Requires truck drivers with "hours of service" violations to install electronic recorder in their vehicles to keep track of when and how long they are driving.	Owner-Operator Independent Drivers Association		✓
	The Heritage Foundation		✓
NHTSA Electronic Stability Control Systems for Commercial Vehicles. Proposed Rule. 77 Fed. Reg. 100 (to be codified at 49 CFR 571): Would require commercial vehicles in excess of 26,000 pounds to install these systems.	Owner-Operator Independent Drivers Association		✓
NHTSA Heavy Vehicle Speed Limiters: Expectation of a proposed rule that would require installation of speed limiters on heavy commercial vehicles.	Owner-Operator Independent Drivers Association		✓

DEPARTMENT OF THE TREASURY / MISC. JOINT FINANCIAL RULEMAKINGS			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, (April 3, 2012) (codified at 12 C.F.R. pt 1310): The Financial Stability Oversight Council (FSOC), within Treasury, released this final rule, which details the criteria that will be used to determine whether certain nonbank financial companies should be designated as "Systemically Important Financial Institutions" (SIFIs) and therefore subject to enhanced prudential standards and supervision by FRB.	American Financial Services Association		✓
	U.S. Chamber of Commerce		✓
Proprietary Data and OFR: § 151 of Dodd-Frank created the Office of Financial Research (OFR), which is housed in Treasury but is outside of the Congressional appropriations process and has wide ranging capabilities and rulemaking authority to compel businesses to provide proprietary data.	U.S. Chamber of Commerce		✓
The Volcker Rule: § 619 of Dodd-Frank amends the Bank Holding Company Act of 1956 to establish the Volcker Rule,	Financial Services Roundtable	✓	✓

which prohibit banks and other banking entities from engaging in proprietary trading and from sponsoring or investing in private equity or hedge funds. The Volcker Rule also prohibits banks and other banking entities from extending credit to, or engaging in other covered transactions with, private equity or hedge funds that they advise, manage, sponsor, or organize.	American Express		✓
	American Financial Services Association		✓
	Business Roundtable		✓
	U.S. Chamber of Commerce		✓
Credit Risk Retention, 76 Fed. Reg. 24090 (proposed April 29, 2011) (to be codified at 24 C.F.R. pt 267): This rule implements the requirement that “securitizers” of asset-backed securities (ABSs) retain not less than five percent of the credit risk of the assets collateralizing their ABSs. (This rule includes an exemption for ABSs that are collateralized exclusively by residential mortgages that qualify as “qualified residential mortgages.”)	American Financial Services Association		✓
	Credit Union National Association		✓
	Independent Community Bankers Association		✓
	National Association of Home Builders		✓
Incentive-Based Compensation Arrangements, 76 Fed. Reg. 21170 (April 14, 2011) (to be codified at 12 C.F.R. pt. 42): This final rule was released with respect to incentive based compensation practices at covered financial institutions as required by § 956 of Dodd-Frank.	U.S. Chamber of Commerce		✓

ENVIRONMENTAL PROTECTION AGENCY			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Atrazine (Herbicide) Re-Evaluation (Potential): The EPA began a re-evaluation of Atrazine in 2009 although not due for re-evaluation until 2013. Atrazine is an agricultural herbicide primarily used on corn, sorghum, and sugarcane, and is applied most heavily in the Midwest.	American Farm Bureau Federation	✓	
Boiler & Process Heater Maximum Achievable Control Technology (MACT) (Boiler MACT), 75 Fed. Reg. 32682 (proposed April 29, 2010) (to be codified at 40 C.F.R. pts. 60, 63, and 24): This rule addresses emissions from boilers, process heaters, and solid waste incinerators. On December 7, 2010, EPA sought an extension of time from the District Court for the District of Columbia to re-propose and finalize these standards.	Air-Conditioning, Heating and Refrigeration Institute	✓	
	The Aluminum Association	✓	
	American Chemistry Council	✓	
	American Coatings Association	✓	
	American Coke and Chemicals Institute	✓	
	American Express		✓
	American Forest and Paper Association	✓	✓
	American Fuel & Petrochemical Manufacturers		✓
American Home Furnishings	✓		

	Alliance		
	American Iron and Steel Institute	✓	✓
	Anthracite Region Independent Power Producers Association		✓
	APA—The Engineered Wood Association	✓	
	Business Roundtable	✓	✓
	CF Industries Holdings, Inc.		✓
	Chamber of Commerce	✓	✓
	ConocoPhillips, Inc.	✓	✓
	Council of Industrial Boilers	✓	
	Industrial Energy Consumers of America	✓	
	Kitchen Cabinet Manufacturers Association	✓	
	Metal Treating Institute	✓	
	Motor and Equipment Manufacturers Association	✓	✓
	National Asphalt Pavement Association	✓	
	National Association of Manufacturers	✓	✓
	National Black Chamber of Commerce	✓	
	National Council of Textile Organizations		✓
	National Federation of Independent Business	✓	✓
	National Mining Association	✓	
	National Oilseed Processors Association	✓	✓
	Non-Ferrous Founders Society		✓
	Printing Industries of America		✓
	Small Business & Entrepreneurship Council	✓	
	Society of Chemical Manufacturers and Affiliates	✓	
	Textile Rental Services Association	✓	
Brick and Ceramic Kilns Maximum Achievable Control Technology (MACT) (Potential)	The Aluminum Association	✓	
	Brick Industry Association	✓	
California Clean Air Act Pre-emption Waiver, 76 Fed. Reg. 5368: California agreed not to enforce its motor vehicle Greenhouse Gas (GHG) rule in exchange for EPA granting a waiver and issuing CAA regulations for new motor vehicles.	Chamber of Commerce	✓	
	National Automobile Dealers Association	✓	
Central Appalachian Coal (CAPP): Review of Appalachian Surface Coal Mining Activities under Clean Water Act Section 404, National Environmental Policy Act (NEPA), and the Environmental Justice Executive Order (E.O. 12898): On April 1, 2010, the EPA issued three documents that seek to impose specific conductivity limits on discharges from valley fills that would ensure in-stream conductivity levels do not exceed 300-500 uS/cm.	American Coke and Chemicals Institute	✓	
	Industrial Energy Consumers of America	✓	
	National Mining Association	✓	✓
	National Sand, Stone, and Gravel Association	✓	
Chesapeake Bay Total Maximum Daily Load (TMDL): On	Agricultural Retailers Association	✓	✓

December 29, 2010, EPA established the TMDL, a comprehensive “pollution diet” with rigorous accountability measures to initiate sweeping actions to restore clean water in the Chesapeake Bay and the region’s streams, creeks and rivers.	American Farm Bureau Federation	✓	
	American Forest and Paper Association	✓	
	Associated General Contractors	✓	✓
	The Fertilizer Institute	✓	✓
	Industrial Energy Consumers of America	✓	
	National Alliance of Forest Owners	✓	
	Responsible Industry for a Sound Environment	✓	✓
Chemical Manufacturing Area Source Standards Final Rule 40 C.F.R. § 63 (2009): Finalized on October 29, 2009, this rule establishes national emission standards for air pollutants from “area” chemical manufacturing sources.	Society of Chemical Manufacturers and Affiliates	✓	✓
Clean Water Act Section 404(c) “Veto Authority” 33 U.S.C. 1344(c): authorizes EPA to prohibit, restrict, or deny the discharge of dredged or fill material at defined sites. In an attempt to stop mountaintop coal mining, EPA used its veto authority under the Clean Water Act to revoke previously issued, federally-approved U.S. Army Corps of Engineers’ operating permits for mining operations. It is now attempting to veto permits prospectively.	National Stone, Sand & Gravel Association	✓	✓
	The Pebble Partnership	✓	✓
	U.S. Chamber of Commerce	✓	
Cleaning Products Claims Policy under the Federal Insecticide, Fungicide, and Rodenticide (FIRFA) 7 U.S.C. 136 et seq. (1996): Change in EPA guidance regarding cleaning of mold and mildew stains.	American Coatings Association	✓	
	Biotechnology Industry	✓	
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 108(b)—Financial Responsibility Requirements, 75 Fed. Reg. 816 (proposed Jan. 6, 2010) (to be codified 40 C.F.R. pt. 320): EPA has discretionary authority to impose financial responsibility requirements on industrial sectors “consistent with the degree of risk associated with the production, transportation, treatment, storage, or disposal of hazardous waste.”	American Petroleum Institute		✓
	Industrial Energy Consumers of America	✓	
	National Mining Association	✓	✓
	National Tooling & Machining Association	✓	✓
	Precision Machined Products Association	✓	✓
	Precision Metalforming Association	✓	✓
Concentrated Animal Feeding Operations (CAFOs): EPA is working on regulations that are expected to require small- and medium-sized CAFOs to obtain NPDES permits as well as mandating use of more aggressive nutrient management plans. Another rule, proposed in October 2011, would have increased reporting requirements for CAFOs owners. The EPA withdrew this rule on July 13, 2012.	American Farm Bureau Federation	✓	
	National Pork Producers Council		✓
Cooling Water Intake Structures (CWIS) of the Clean Water Act Section 316(b) (Potential): EPA is developing regulations under the Clean Water Act Section 316(b) that requires the location, design, construction and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.	American Express		✓
	American Iron and Steel Institute	✓	✓
	American Petroleum Institute	✓	✓
	Business Roundtable	✓	✓
	Chamber of Commerce	✓	
	ConocoPhillips, Inc.	✓	
	Council of Industrial Boiler Owners	✓	

	Edison Electric Institute	✓	✓
	Electric Reliability Coordinating Council	✓	
	Industrial Energy Consumers of America	✓	
	National Association of Manufacturers		✓
	National Mining Association	✓	
Draft Guidance for Pesticide Registrants on Pesticide Drift Labeling (Pesticide Spray Drift), 74 Fed. Reg. 57166 (proposed on Nov. 4, 2009): EPA proposed guidance for new pesticide labeling to reduce off-target spray and dust drift.	Agricultural Retailers Association	✓	✓
	CropLife America		✓
	National Alliance of Forest Owners	✓	
	Responsible Industry for a Sound Environment		✓
Dioxin in Soil Recommended Interim Preliminary Remediation Goals: the EPA developed draft interim preliminary remediation goals to assess the human health risks from exposures to dioxin in soil. EPA has withdrawn its interim PRG for dioxin from OMB review.	American Chemistry Council	✓	
	American Express		✓
	Business Roundtable		✓
Coal Combustion Residuals (CCRs) Proposed Rule, 75 Fed. Reg. 35127 (proposed June 21, 2010) (to be codified at 40 C.F.R. pt. 257, 261, 264 et al.): EPA proposed on June 21, 2010, to regulate for the first time coal ash (coal combustion residuals) to address the risks from the disposal of waste generated by electric utilities and independent power producers. EPA is considering re-classifying coal ash as either as hazardous under subtitle C of the Resource Conservation and Recovery Act (RCRA), or alternatively, as a nonhazardous solid waste under subtitle D of RCRA. The comment period closed on November 14, 2011. EPA is expected to issue a finalize rule by the end of 2012.	American Express		✓
	American Forest and Paper Association	✓	✓
	American Iron & Steel Institute		✓
	American Road & Transportation Builders Association		✓
	Anthracite Region Independent Power Producers Association		✓
	Associated Builders & Contractors, Inc.		✓
	Associated General Contractors	✓	✓
	Business Roundtable		✓
	Carpet & Rug Institute		✓
	Chamber of Commerce	✓	✓
	Council of Industrial Boiler Owners	✓	
	Edison Electric Institute	✓	✓
	Electric Reliability Coordinating Council	✓	
	Industrial Energy Consumers of America	✓	
	Interlocking Concrete Pavement Institute		✓
	Murray Energy Corporation	✓	
	National Association of Home Builders	✓	✓
	National Concrete Masonry Association	✓	
	National Mining Association	✓	✓
	National Sand, Stone, and Gravel Association	✓	✓
Portland Cement Association	✓		
E15 Ethanol Fuel Rule (EPA420-F-11-003): In October 2010 and January 2011, the EPA granted a “partial” waiver for E15 fuel (blend of 15% ethanol and 85% gasoline) to be used in cars	Alliance of Automobile Manufacturers		✓
	American Express		✓

<p>and light trucks manufactured in model year (MY) 2001 and later. In July 2011, EPA issued a final “mitigation” rule on the labeling of E15 at retail outlets to prevent consumer misfueling. As of June 15, 2012, EPA authorized companies to being an introduction of E15 into the marketplace.</p>	American Fuel & Petrochemical Manufacturers		✓
	American Land Title Association	✓	
	American Petroleum Institute	✓	✓
	Association of International Automobile Manufacturers	✓	
	Business Roundtable		✓
	ConocoPhillips, Inc.	✓	
	Global Automakers		✓
	Grocery Manufacturers Association	✓	
	Mazda North American Operations	✓	✓
	National Automobile Dealers Association	✓	
	National Marine Manufacturers Association	✓	
	National Petrochemical and Refiners Association	✓	
	Small Business & Entrepreneurship Council	✓	
	Toyota Motor North America, Inc.	✓	✓
<p>Effluent Limit Guideline Rule for Construction Site Runoff, 40 C.F.R. § 450 (2009): EPA issued a final rule on December 1, 2009, regulating stormwater discharges from construction and development industry. In January 2011, the EPA proposed Stormwater Regulations to Address Discharge from Developed Sites, final action expected in November 2012. Sec. 402(p) of the Clean Air Act requires the EPA to regulate certain discharge from stormwater in order to protect water quality.</p>	American Hardware Manufacturers Association		✓
	American Petroleum Institute		✓
	American Road & Transportation Builders Association		✓
	Associated Builders & Contractors, Inc.	✓	✓
	Associated General Contractors	✓	✓
	Council of Industrial Boiler Owners	✓	
	Edison Electric Institute		✓
	Independent Petroleum Association of America	✓	✓
	National Association of Home Builders	✓	✓
National Sand, Stone, and Gravel Association	✓	✓	
<p>Effluent Limitation Guidelines and New Source Performance Standards for the New Airport Deicing Category, 74 Fed. Reg. 44676 (proposed Aug. 28, 2009) (to be codified at 40 C.F.R. pt. 449): EPA is establishing new technology-based guidelines and standards for the discharges from airport deicing efforts.</p>	Airlines for America	✓	
<p>Emergency Planning and Community Right-to-Know Act (Region 4 interpretation of the Fertilizer Retailer Exemption)</p>	Agricultural Retailers Association	✓	✓
	The Fertilizer Institute		✓
<p>Endocrine Disruptor Screening Program for Chemicals (EDSP): EPA announced the initial list of chemicals to be screened for their potential effects on the endocrine system on April 15, 2009, and the first test orders were issued on October 29, 2009. EPA then developed a second list of chemicals for screening and published three related Federal Register Notices on November 17, 2010.</p>	Consumer Specialty Products Association	✓	
	The Methanol Institute	✓	

Formaldehyde Emission from Pressed Wood Products, 73 Fed. Reg. 73620 (advanced notice of proposed rulemaking, Dec. 3, 2008) (to be codified to 40 C.F.R. Chapter I): pursuant to the Formaldehyde Standards for Composite Wood Products Act, EPA must promulgate regulations to implement this law by January 1, 2013.	Composite Panel Association	✓	
	Kitchen Cabinet Manufacturers Association	✓	
Greenhouse Gas (GHG) Tailoring Rule, 40 CFR § 52, 70 (2009): In 2010, EPA finalized a rule to tailor how certain provisions in the Clean Air Act (CAA) Prevention of Significant Deterioration (PSD) and Title V permitting programs apply to stationary sources that emit greenhouse gas emissions.	Agricultural Retailers Association	✓	✓
	American Chemistry Council		✓
	American Coke and Chemicals Institute	✓	
	American Farm Bureau Federation	✓	
	American Forest & Paper Association	✓	
	American Fuel & Petrochemical Manufacturers		✓
	American Iron and Steel Institute	✓	✓
	American Petroleum Institute	✓	✓
	Anthracite Region Independent Power Producers Association		✓
	APA—The Engineered Wood Association	✓	
	Associated General Contractors		✓
	CF Industries Holdings, Inc.		✓
	Chamber of Commerce	✓	
	ConocoPhillips, Inc.	✓	✓
	Industrial Energy Consumers of America	✓	
	Metal Treating Institute	✓	
	Murray Energy Corporation	✓	
	National Alliance of Forest Owners	✓	
	National Association of Home Builders	✓	✓
	National Association of Manufacturers		✓
	National Black Chamber of Commerce	✓	
	National Electrical Manufacturers Association	✓	
	National Federation of Independent Business		✓
	National Oilseed Processors Association	✓	
	National Petrochemical and Refiners Association	✓	
	Portland Cement Association	✓	
Printing Industries of America		✓	
The Fertilizer Institute	✓	✓	
Greenhouse Gas (GHG) Emissions Regulations under the Clean Air Act including: Fuel Economy Greenhouse Gas Rules for MY 2012-2016: on April 1, 2010, the EPA and the Department of Transportation's National Highway Traffic Safety Administration (NHTSA)	Alliance of Automobile Manufacturers (MY 2017-2025)	✓	✓
	American Bakers Association (General)	✓	✓
	American Chemistry Council (NSPS)		✓

<p>issued a final rule to establish greenhouse gas (GHG) and corporate average fuel economy (CAFE) standards for light-duty vehicles.</p> <p>Fuel Economy Greenhouse Gas Rules (Proposed) for MY 2017-2025: on January 24, 2011, the EPA along with the Department of Transportation and the state of California announced a single timeframe for proposing fuel economy and greenhouse gas standards for MY 2017-2025 cars and light-trucks.</p> <p>Greenhouse Gas (GHG) and Fuel Efficiency Standards for Heavy-Duty Vehicles: in response to a Presidential Memorandum of May 21, 2010, the EPA with the National Highway Traffic Safety Administration (NHTSA) announced they will initiate a rulemaking to reduce GHG emissions for commercial medium- and heavy-duty trucks.</p> <p>Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from the Iron and Steel Industry</p>	American Express (NSPS, BACT)		✓
	American Fuel & Petrochemical Manufacturers (BACT, NSPS)		✓
	American Iron and Steel Institute (BACT)	✓	✓
	American Petroleum Institute (NSPS, BACT)	✓	✓
	Associated Builders & Contractors, Inc. (General)	✓	
	Association of American Railroads (General)	✓	
	Brick Industry Association (NSPS)	✓	
	Business Roundtable (NSPS, BACT)	✓	✓
	CF Industries Holdings, Inc.		✓
	Chamber of Commerce (General)	✓	✓
	Charlotte Pipe and Foundry Company (General)	✓	
	Council of Industrial Boiler Owners (General)	✓	
	Electric Reliability Coordinating Council (General)	✓	
	Ford (MY 2017-2025)	✓	
	Forging Industry Association (General)	✓	
	Global Automakers (MY 2017-2025)		✓
	Independent Petroleum Association of America (General)	✓	
	Industrial Energy Consumers of America (NSPS)	✓	
	Mazada North American Operations		✓
	Motor and Equipment Manufacturers Association (Car rules)	✓	
	Murray Energy Corporation (General)	✓	
	National Automobile Dealers Association (MY 2012-2016)	✓	✓
	National Black Chamber of Commerce (General)	✓	
	National Council of Textile Organizations	✓	
	National Petrochemical and Refiners Association (BACT, general)	✓	
	National Stone, Sand, and Gravel Association (Small engines)	✓	
	Owner Operator Independent Drivers Association (Heavy-Duty Vehicles)	✓	✓
	Small Business & Entrepreneurship Council (General)	✓	
	The Fertilizer Institute (NSPS)		✓

	Toyota Motor North America, Inc.	✓	✓
Hydrogen Sulfide as a Hazardous Air Pollutant (Potential). EPA has been asked to list hydrogen sulfide as another pollutant to regulate in the Maximum Achievable Control Technology (MACT) program.	American Coke and Chemicals Institute	✓	
	American Forest & Paper Association		✓
	Independent Petroleum Association of America	✓	
	Industrial Energy Consumers of America	✓	
Integrated Risk Information System (IRIS) Review of Inorganic Arsenic (Draft Review): the EPA published the toxicological review of inorganic arsenic on February 19, 2010, which addresses only cancer human health effects that may result from chronic exposure.	National Mining Association	✓	
Integrated Risk Information System (IRIS) Review of Formaldehyde—Inhalation Assessment (Draft Review): On June 2, 2010, EPA released the draft assessment, which addresses both non-cancer and cancer human health effects that may result from chronic inhalation exposure.	American Chemistry Council		✓
	APA—The Engineered Wood Association	✓	
	Kitchen Cabinet Manufacturers Association	✓	
Integrated Risk Information System (IRIS) Review of Methanol (Draft Review): EPA released an external review draft in January 2010 for public review and comment, which addresses both non-cancer and cancer human health effects that may result from chronic exposure.	The Methanol Institute	✓	
Interstate Transport, “Cross-State Air Pollution Rule” (CSAPR) 75 Fed. Reg. 45210 (proposed Aug. 2, 2010) (to be codified at 40 C.F.R. pt. 51, 52, 72, 78, and 97): this rule would require significant reductions in sulfur dioxide and nitrogen dioxide emissions that cross state lines. On July 6, 2011, the EPA finalized the rule, referred to as the Cross-State Air Pollution Rule (CSAPR). The rule was stayed by the Court of Appeals in December 2011, but pending Court action, this rule could go into effect as early as January 1, 2013.	American Iron & Steel Institute		✓
	Anthracite Region Independent Power Producers Association		✓
	Chamber of Commerce	✓	✓
	Council of Industrial Boiler Owners	✓	
	Electric Reliability Coordinating Council	✓	
	Industrial Energy Consumers of America	✓	
	Murray Energy Corporation	✓	
	National Mining Association	✓	✓
Lead Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program (Proposed) 75 Fed. Reg. 38959 (proposed July 7, 2010) (to be codified at 40 C.F.R. pt. 745): EPA requires contractors to perform “dust-wipe testing” after most construction activities to show that lead levels comply with EPA standards. EPA has withdrawn this requirement.	Associated General Contractors	✓	
Lead: Renovation, Repair, and Painting Program, 40 C.F.R. § 745 (2008): beginning April 22, 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. An opt-out provision for homes not occupied by children under six or pregnant women was removed in 2010.	Air Conditioning Contractors of America	✓	
	American Architectural Manufacturers Association	✓	
	American Express		✓
	Associated Builders & Contractors, Inc.	✓	✓
	Associated General Contractors	✓	✓
	Business Roundtable		✓
	Chamber of Commerce	✓	

	Consumer Electronics Association		✓
	Electronic Security Association	✓	
	Hearth, Patio, & Barbecue Association	✓	
	Insulation Contractors Association of America	✓	
	Manufactured Housing Institute	✓	
	National Apartment Association	✓	
	National Association of Home Builders	✓	✓
	NAIOP, the Commercial Real Estate Development Association	✓	
	National Federation of Independent Business	✓	✓
	National Lumber & Building Materials Dealers	✓	✓
	National Multi Housing Council	✓	
	National Glass Association	✓	
	Plumbing-Heating-Cooling Contractors—National Association	✓	
	The Real Estate Roundtable	✓	
	Vinyl Siding Institute	✓	
	Window & Door Manufacturers Association	✓	✓
Mandatory Reporting of Greenhouse Gases (GHG) Rule, 40 C.F.R. § 98 (2010): this rule requires reporting of greenhouse gas (GHG) data and other relevant information from large sources and suppliers in the United States.	American Forest and Paper Association	✓	
	American Petroleum Institute		✓
	Association of Equipment Manufacturers	✓	
	Conoco-Phillips, Inc.	✓	✓
	Industrial Energy Consumers of America	✓	
	Portland Cement Association	✓	
Nanopesticide Policy (Proposed): EPA proposed a nanopesticide policy in April 2010, which requires the presence of a nanomaterial in a registered pesticide to be reported under the “unreasonable adverse effect” provision of FIFRA.	Silver Nanotechnology Working Group	✓	✓
National Ambient Air Quality Standards (NAAQS) for Lead 40 C.F.R. § 58 (2008): in October 2008, EPA substantially reduced the NAAQS for lead. EPA made final revisions to the ambient monitoring requirements for measuring lead in the air on December 14, 2010.	American Express		✓
	Business Roundtable		✓
	Non-Ferrous Founders’ Society	✓	
National Ambient Air Quality Standards (NAAQS) for Nitrogen Oxide 40 CFR §§ 50, 58 (2010): On January 22, 2010, the EPA strengthened the NAAQS for nitrogen dioxide.	American Coke and Chemicals Institute	✓	
	American Farm Bureau Federation	✓	
	American Iron and Steel Institute	✓	✓
	American Petroleum Institute		✓
	American Road & Transportation Builders Association		✓
	Associated General Contractors	✓	✓
	Conoco-Phillips, Inc.		✓
Council of Industrial Boiler Owners	✓		

	Electric Reliability Coordinating Council	✓		
	Industrial Energy Consumers of America	✓		
	Portland Cement Association	✓		
National Ambient Air Quality Standards (NAAQS) for Ozone, 75 Fed. Reg. 2938 (proposed Jan. 19, 2010) (to be codified at 40 C.F.R. pt. 50, 58): EPA is lowering the NAAQS for the ozone to somewhere in the 60-70 parts per billion range. On December 8, 2010, the EPA Administrator requested more input from agency's science advisors. The rule has since been withdrawn.	American Coatings Association	✓		
	American Coke and Chemicals Institute	✓		
	American Express		✓	
	American Forest and Paper Association	✓		
	American Fuel & Petrochemical Manufacturers		✓	
	American Iron and Steel Institute	✓		
	American Petroleum Institute	✓	✓	
	American Road & Transportation Builders Association		✓	
	APA—The Engineered Wood Association	✓		
	Associated General Contractors	✓	✓	
	Brick Industry Association	✓		
	Business Roundtable	✓		
	Chamber of Commerce	✓	✓	
	Charlotte Pipe and Foundry Company	✓		
	Conoco-Phillips, Inc.	✓	✓	
	Consumer Specialty Products Association	✓		
	Council of Industrial Boiler Owners	✓		
	Electric Reliability Coordinating Council	✓		
	Industrial Energy Consumers of America	✓		
	Metal Treating Institute	✓		
	Murray Energy Corporation	✓		
	National Association of Home Builders	✓		
	National Association of Manufacturers	✓	✓	
	National Black Chamber of Commerce	✓		
	National Federation of Independent Business	✓		
	National Oilseed Processors Association	✓	✓	
	National Petrochemical and Refiners Association	✓		
	Portland Cement Association	✓		
	Small Business & Entrepreneurship Council	✓		
	National Ambient Air Quality Standards (NAAQS) for Particulate Matter: EPA proposed NAAQS for particulate	Agricultural Retailers Association	✓	✓

matter (PM) in early 2011, with final regulations due in mid-August 2012. On May 31, 2012, EPA sent the proposed PM air standards to OMB for review.	American Coke and Chemicals Institute	✓	
	American Express		✓
	American Farm Bureau Federation	✓	
	American Forest and Paper Association	✓	✓
	American Iron and Steel Institute	✓	✓
	American Petroleum Institute		✓
	Associated General Contractors		✓
	Business Roundtable		✓
	Chamber of Commerce	✓	
	Charlotte Pipe and Foundry Company	✓	
	Council of Industrial Boiler Owners	✓	
	Electric Reliability Coordinating Council	✓	
	Industrial Energy Consumers of America	✓	
	National Asphalt Pavement Association	✓	
	National Oilseed Processors Association		✓
	National Sand, Stone, and Gravel Association	✓	
	Non-Ferrous Founders Society		✓
Portland Cement Association	✓		
National Ambient Air Quality Standards (NAAQS) for Sulfur Dioxide 40 C.F.R. §§50, 53, 58 (2010): EPA strengthened the NAAQS for sulfur dioxide on June 2, 2010.	The Aluminum Association	✓	✓
	American Coke and Chemicals Institute	✓	
	American Express		✓
	American Iron and Steel Institute	✓	✓
	American Petroleum Institute		✓
	Business Roundtable		✓
	Council of Industrial Boiler Owners	✓	
	Industrial Energy Consumers of America	✓	
Portland Cement Association	✓		
National Emission Standards for Hazardous Air Pollutants (NESHAPs) from the Portland Cement Manufacturing Industry (“Cement MACT”) 40 CF.R. §§ 60, 63 (2010): regulates emission limits for mercury, THC, and particulate matter from new and existing kilns located at major sources.	Associated Builders & Contractors, Inc.		✓
	Chamber of Commerce		✓
	Cemex	✓	
	Portland Cement Association	✓	✓

New Source Performance Standards (NSPS) for Portland Cement Plants 40 C.F.R. §§ 60, 63 (2010): regulates emission limits for particulate matter, nitrogen oxides, and sulfur dioxide for facilities that commence construction, modification, or reconstruction after June 16, 2008.	Cemex	✓	
	Portland Cement Association	✓	
Non-Hazardous Secondary Materials (Identification of) that are Solid Waste, 76 Fed. Reg. 15,456 (final rule issued Mar. 21, 2011). This rule revises the 2008 definition of “solid waste” under the hazardous waste provisions of the Resource Conservation and Recovery Act (RCRA). The rule seeks to clarify which non-hazardous secondary materials should be disposed or recycled.	American Forest & Paper Association		✓
	American Home Furnishings Alliance	✓	
	Automotive Aftermarket Industry Association	✓	
	Chamber of Commerce	✓	✓
	Industrial Energy Consumers of America	✓	
	IPC, The Association Connecting Electronics Industries	✓	
	Non-Ferrous Founders’ Society	✓	
Numeric Nutrient Water Quality Criteria for Florida Waters, 40 C.F.R. §131 (2010): the final rule published on December 6, 2010, issues numeric water quality criteria for nitrogen/phosphorus pollution to protect aquatic life in lakes, flowing waters, and springs within Florida	Agricultural Retailers Association	✓	✓
	American Express		✓
	American Forest and Paper Association	✓	✓
	American Petroleum Institute		✓
	Business Roundtable		✓
	CF Industries Holdings, Inc.	✓	✓
	The Fertilizer Institute	✓	✓
	Industrial Energy Consumers of America	✓	
	Western Growers Association		✓
Polychlorinated Biphenyl (PCBs) Analytical Method: EPA has proposed an analytical test method that measures in a very low range of parts per quadrillion.	American Forest and Paper Association	✓	
Pesticide Permits—Proposed Clean Water Act National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit (PGP) Program, 75 Fed. 13468 (proposed June 4, 2010): Proposed permit system that will be put in place by April 9, 2011. On October 31, 2011, EPA issued a final NPDES PGP for point source discharges from the application of pesticides to waters of the U.S.	Agricultural Retailers Association	✓	✓
	American Express		✓
	American Farm Bureau Federation	✓	
	American Petroleum Institute		✓
	Business Roundtable		✓
	CropLife America		✓
	Responsible Industry for a Sound Environment	✓	✓
	Western Growers Association		✓
Prior Converted Croplands: EPA (with Army Corps of Engineers) recapturing prior converted croplands (PCC) (wetlands drained before 1985 that no longer exhibit the characteristics of wetlands) by altering guidance to claim a “change of use” places PCC under the Clean Water Act.	American Farm Bureau Federation	✓	
Residual Risk Reviews of the Pulp and Paper Industry: Pursuant to a settlement agreement, EPA must propose a residual risk determination for pulp and paper mills.	American Forest and Paper Association	✓	✓
Safe Drinking Water Act: Hydraulic Fracturing Regulation (Potential)	Conoco-Phillips, Inc.	✓	
	Independent Petroleum Association of America	✓	

Spill Prevention, Control, and Countermeasure (SPCC) Regulation, 40 C.F.R. § 112 (2008): This rule's purpose is to help facilities prevent a discharge of oil into navigable waters or adjoining shorelines.	American Farm Bureau	✓	
	Associated General Contractors	✓	✓
	American Petroleum Institute		✓
Texas Air Permits: Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Flexible Permits, 40 C.F.R. § 52 (2010): EPA is proposing disapproval of submittals from the State of Texas, through the Texas Commission on Environmental Quality (TCEQ) to revise the Texas SIP to include a new type of NSR permitting program, Flexible Permits (the Texas Flexible Permits State Program or the Program).	Chamber of Commerce	✓	
	National Petrochemical and Refiners Association	✓	
Toxic Release Inventory (TRI) Articles Exemption Clarification Proposed Rule, 74 Fed. Reg. 42625 (proposed Aug. 24, 2009) (to be codified at 40 C.F.R. pt. 372): EPA is proposing to remove a paragraph of guidance dealing with releases due to natural weathering of products, and is proposing an interpretation of how the articles exemption applies to the Wood Treating Industry, specifically to treated wood that has completed the treatment process.	American Wire Producers Association	✓	✓
	Independent Petroleum Association of America	✓	
	National Tooling & Machining Association	✓	✓
	Precision Machined Products Association	✓	✓
	Precision Metalforming Association	✓	✓
Toxic Substances Control Act (TSCA) Chemical Action Plans 15 U.S.C. §2601 et seq. (1976): In September 2009, EPA announced a comprehensive strategy for chemical management including “action plans” for 12 chemical families. Thus far, EPA has issued chemical action plans for ten groups of chemicals.	American Express		✓
	Business Roundtable		✓
	Grocery Manufacturers Association	✓	
	Society of Plastics Industry	✓	
Toxic Substances Control Act (TSCA) Chemical Data Reporting (CDR) Rule. 76 Fed. Reg. 50816 (finalized Aug. 16, 2011). Proposed in August 2010, this rule amends the TSCA section 8(a) Inventory Update Reporting (IUR) rule and changed its name to the CDR rule. This rule requires manufacturers and importers to submit information to EPA on the chemicals they supply for industrial use.	American Coatings Association	✓	
	American Forest & Paper Association		✓
	American Fuel & Petrochemical Manufacturers		✓
	American Iron & Steel Institute		✓
	American Petroleum Institute		✓
	Global Automakers		✓
	Industrial Energy Consumers of America	✓	
	IPC, The Association Connecting Electronics Industries	✓	✓
	National Oilseed Processors Association		✓
	Non-Ferrous Founders Society		✓
	Society of Chemical Manufacturers & Affiliates		✓
	Society of Plastics Industry	✓	
	Toyota Motor North America, Inc.		✓
Toxic Substances Control Act (TSCA) Nanoscale Materials/Products Regulation: To ensure that nanoscale materials are manufactured and used in a manner that protects against unreasonable risks to human health and the environment, EPA is pursuing a comprehensive regulatory approach under	NanoBusiness Alliance	✓	

TSCA.			
Toxic Substances Control Act (TSCA) Proposed Test Rule For Coal Tar and Coal Tar-Derived Chemicals	American Coke and Chemicals Institute	✓	
	Society of Plastics Industry	✓	
Use of Settlement Agreements: EPA has entered into settlement agreements with environmental organizations, impacting industry outsiders the Administrative Procedure Act (APA) rulemaking process.	American Farm Bureau U.S. Chamber of Commerce	✓	✓
Utility Boilers Maximum Achievable Control Technology (MACT) (“Utility MACT” or “Mercury Air Toxic Rule”) EPA finalized the rule in December 2011. Pursuant to a 2009 consent decree, the EPA had to issue new National Emission Standard for Hazardous Air Pollutants (NESHAP) regulation on HAP emissions from coal- and oil-fired electric generating units.	American Express		✓
	American Iron & Steel Institute		✓
	Anthracite Region Independent Power Producers Association		✓
	Association of American Railroads		✓
	Business Roundtable	✓	✓
	Carpet & Rug Institute		✓
	CF Industries Holdings, Inc.		✓
	Chamber of Commerce		✓
	Edison Electric Institute		✓
	Electric Reliability Coordinating Council	✓	
	Industrial Energy Consumers of America	✓	
	National Association of Manufacturers		✓
	National Black Chamber of Commerce		✓
	National Mining Association	✓	✓
	The Fertilizer Institute		✓
Draft Guidance on Identifying Waters Protected by the Clean Water Act (CWA). On April 27, 2011, EPA and the Army Corps of Engineers released “Draft Guidance on Identifying Waters of the U.S. Protected by the Clean Water Act” for a 60-day public comment period. On February 21, 2012, the proposed guidance was sent in final form to OMB.	Agricultural Retailers Association		✓
	American Farm Bureau Federation	✓	
	American Forest & Paper Association		✓
	American Gas Association		✓
	American Petroleum Institute		✓
	American Road & Transportation Builders Association		✓
	Associated Builders & Contractors, Inc.		✓
	Associated General Contractors		✓
	Chamber of Commerce	✓	✓
	Edison Electric Institute		✓
	Independent Petroleum Association of America		✓
	National Association of Home Builders		✓
	National Association of Manufacturers		✓
	National Federation of Independent Business		✓
	National Mining Association		✓
National Oilseed Processors		✓	

	Association		
	National Pork Producers Council		✓
	National Stone, Sand & Gravel Association		✓
Hydraulic Fracturing Study. EPA has finalized a suite of four new regulations for the oil and natural gas industry, including the first federal air standard for wells that are hydraulically fractured. In addition, EPA has announced that it intends to propose a rulemaking on disposal of fracturing water and fluids from shale gas extraction operations in 2014.	American Express		✓
	American Gas Association		✓
	American Iron & Steel Institute		✓
	American Petroleum Institute		✓
	Business Roundtable		✓
	Conoco-Phillips, Inc.		✓
	Independent Petroleum Association of America		✓
	National Association of Manufacturers		✓
	Tier 3 gasoline standards. EPA is scheduled to issue proposed Tier 3 emissions standards for passenger cars and light trucks by the summer of 2012.	American Fuel & Petrochemical Manufacturers	
American Petroleum Institute			✓
Global Automakers			✓
Toyota Motor North America, Inc.			✓
Numeric Nutrient Criteria and Nutrient Total Maximum Daily Loads (TMDLs) on the Mississippi River Basin	Agricultural Retailers Association		✓
	National Pork Producers Council		✓
Revising Underground Storage Tank (UST) Regulations; 76 Fed. Reg. 71,707 (proposed Nov. 18, 2011).	American Express		✓
	American Petroleum Institute		✓
	Airlines for America		✓
	Business Roundtable		✓
National Emissions Standards for Hazardous Air Pollutants (NESHAPS): Group IV Polymers and Resins, Pesticide Active Ingredient Production, and Polyether Polyols Production. 77 Fed. Reg. 1,268. (proposed in Jan. 9, 2012.)	American Chemistry Council		✓
	International Liquid Terminals Association		✓
National Emissions Standards for Hazardous Air Pollutants (NESHAPS): Petroleum Refineries and National Uniform Emission Standards for Heat Exchange Systems. 77 Fed. Reg. 960 (proposed Jan. 6, 2012).	American Chemistry Council		✓
	American Forest & Paper Association		✓
	American Fuel & Petrochemical Manufacturers		✓
	American Petroleum Institute		✓
	Conoco-Phillips, Inc.		✓
	International Liquid Terminals Association		✓
National Emission Standards for Storage Vessel and Transfer Operations, Equipment Leaks, and Closed Vent Systems and Controls Devices. 77 Fed. Reg. 17,897 (proposed Mar. 26, 2012).	American Chemistry Council		✓
	American Petroleum Institute		✓
	Society of Chemical Manufacturers & Affiliates		✓
National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Chemical Manufacturing Area Sources. 74 Fed Reg. 56,008. Codified at 40 CFR 63 (final rule issued Oct. 29, 2009). This would require certain synthetic sources to obtain Title V permits.	American Chemistry Council		✓
	Anthracite Region Independent Power Producers Association		✓

<p>Confidential Business Information (CBI): PMN Amendments Claiming Chemical & Microorganism Identity as Confidential in Data from Health and Safety Studies Submitted under Toxic Substances Control Act (TSCA) Prior to the Commencement of Manufacture. In April 2012, EPA announced a new proposed rulemaking to amend its new chemical and microorganism pre-manufacturer regulations under TSCA Sec. 14(b).</p>	American Cleaning Institute		✓
	American Express		✓
	Business Roundtable		✓
	Society of Chemical Manufacturers & Affiliates		✓
<p>General Duty Clause (GDC) of the Clean Air Act (CAA) Amendments of 1990, Sec. 112I(1).</p>	American Coatings Association		✓
<p>Control Techniques Guidelines (CTG) for Miscellaneous Metal and Plastic Parts Coatings. Publication No. EPA-453/R-08-003 (September 2008). Creates new limits for Volatile Organic Compounds (VOCs) used in marine coatings for pleasure craft.</p>	American Coatings Association		✓
<p>New Source Performance Standards for Kraft Pulp Mills, 43 Fed. Reg. 7,568. (Feb. 23, 1978). In September 2011 EPA was sued by environmental groups demanding EPA revisit the Kraft Pulp NSPS.</p>	American Forest & Paper Association		✓
<p>Integrated Risk Information System (IRIS) Assessment Revisions. IRIS process consists of the development of a draft Toxicological Review for a chemical. In 2011, EPA announced revisions to the IRIS process.</p>	American Express		✓
	American Forest & Paper Association		✓
	American Petroleum Institute		✓
	Business Roundtable		✓
<p>Integrated Risk Information System (IRIS): Draft Toxicological Review of 1, 4-Dioxane: In Support of Summary Information on the IRIS, 76 Fed. Reg. 57,739. (Notice of Public Comment Period Extension Sept. 16, 2011).</p>	American Frozen Food Institute		✓
<p>Regulation of Fuels and Fuel Additives: 2012 Renewable Fuel Standards (RFS), “The Cellulosic Mandates,” 77 Fed. Reg. 1,320 (final rule Jan. 9, 2012). EPA issued a final rule announcing the price for cellulosic biofuel waiver credits at \$6.8 million a gallon.</p>	American Fuel & Petrochemical Manufacturers		✓
	American Petroleum Institute		✓
<p>Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard (RFS) Program, Renewable Identification Number (RIN) Requirement, 75 Fed. Reg.</p>	American Fuel & Petrochemical Manufacturers		✓

14,669 (final rule on Mar. 26, 2010).	American Petroleum Institute		✓
National Emission Standards for Hazardous Air Pollutants for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry. 71 Fed. Reg. 76,603 (final rule on Dec. 21, 2006).	American Fuel & Petrochemical Manufacturers		✓
	American Petroleum Institute		✓
Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards (NSPS). EPA announced its new proposed rulemaking in December 2011 and is expected to issue a final rule in December 2012.	American Fuel & Petrochemical Manufacturers		✓
	American Petroleum Institute		✓
	Conoco-Phillips, Inc.		✓
Petroleum Refinery Residual Risk Standards. 74 Fed. Reg. 55,505 (final rule Oct. 28, 2009)	American Fuel & Petrochemical Manufacturers		✓
	American Petroleum Institute		✓
National Volatile Organic Compound (VOC) Emission Standards, 77 Fed. Reg. 14,270 (direct final rule on June 7, 2012).	American Hardware Manufacturers Association		✓
Water recycling of grey water. Only 30 of the 50 states have regulations pertaining to water recycling of grey water.	Carpet & Rug Institute		✓
Green Seal and Design for the Environmental (DfE) Standards to certify “green” cleaning products.	Carpet & Rug Institute		✓
New Source Performance Standards (NSPS) for Nitric Acid Plants. On May 15, 2012, EPA released a final version of NSPS for nitric acid plants (NAPs) that reduced emitted nitrogen oxides applicable to each plant commencing construction, modification, or reconstruction after October 14, 2011.	CF Industries Holdings, Inc.		✓
	The Fertilizer Institute		✓
Oil and Natural Gas Sector: New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) Reviews. 76 Fed. Reg. 52,738 (proposed on Aug. 23, 2011).	American Petroleum Institute		✓
	Conoco-Phillips, Inc.		✓
	Independent Petroleum Association of America		✓
Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels – Draft (published May 10, 2012).	American Petroleum Institute		✓
	Conoco-Phillips, Inc.		✓
Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans, 76 Fed. Reg. 82,219 (proposed rule on Dec. 30, 2011).	Chamber of Commerce		✓
	Edison Electric Institute		✓
California State Motor Vehicle Pollution Control Standards; Within the Scope Determination and Waiver of Preemption Decision for Amendments to California’s Zero-Emission Vehicle (ZEV) Standards, 76 Fed. Reg. 61,095 (notice of decision to grant waiver on Oct. 3, 2011).	Global Automakers		✓
	Toyota Motor North America, Inc.		✓

Clean Water Act (CWA) Section 402 Permits: National Pollutant Discharge Elimination System (NPDES). Guidance used to usurp role that states play in setting water quality standards under Sec. 303 of the CWA with respect to conductivity.	National Mining Association		✓
	National Stone, Sand & Gravel Association		✓
New Source Performance Standards (NSPS) for Grain Elevators, 40 CFR Part 60, Subpart DD. Section 11 (NSPS) of the Clean Air Act (CAA). In 2011, EPA placed the NSPS on its list to examine under E.O. 13563 for possible revision or repeal.	National Oilseed Processors Association		✓
National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Reciprocating Internal Combustion Engines (RICE); New Source Performance Standards for Stationary Internal Combustion Engines, 77 Fed. Reg. 33,812 (proposed rule June 7, 2012). This rule amends the NESHAPs for stationary reciprocating internal combustion engines under Section 112 of the Clean Air Act (CAA).	American Petroleum Institute		✓
	National Stone, Sand & Gravel Association		✓
Integrated Risk Information System (IRIS) for Nickel. EPA is working on a proposed schedule and an initial draft of the proposed rule.	National Tooling & Machining Association		✓
	Precision Machined Products Association		✓
	Precision Metalforming Association		✓
Commercial & Industrial Solid Waste Incineration (CISWI) Units Rule on Industrial, Commercial, and Institutional Boilers and Process Heaters. 76 Fed. Reg. 28,662. (final rule issued May 18, 2011).	American Iron & Steel Institute		✓
	Anthracite Region Independent Power Producers Association		✓
	ConocoPhillips, Inc.		✓
	Non-Ferrous Founders Society		✓
National Emissions Standards for Hazardous Air Pollutants (NESHAPs): Secondary Aluminum Production, 77 Fed. Reg. 8,576 (proposed rule Feb. 14, 2012).	The Aluminum Association		✓
	Non-Ferrous Founders Society		✓
National Pollutant Discharge Elimination System (NPDES) Program eReporting Rule. EPA sent a draft proposed rule to OMB for review in January 2012. The proposal would require electronic reporting of discharge monitoring reports by Jan. 2014 and for general permits by 2015.	Non-Ferrous Founders Society		✓
Sanitary Sewer Overflows Standards. In March 2011, EPA promulgated new regulations under Sec. 129 of the Clean Air Act (CAA) for air emissions from incinerators burning domestic sewage sludge at publicly owned treatment works (POTWs).	National Association of Clean Water Agencies		✓
National Emissions Standards for Hazardous Air Pollutants (NESHAPs): Primary Aluminum Reduction Plants, 76 Fed. Reg. 76,260 (proposed rule Dec. 6, 2011).	The Aluminum Association		✓
Standards of Performance for Greenhouse Gas (GHG) Emissions for New Stationary Sources: Electric Utility Generating Units. 77 Fed. Reg. 22,392 (Proposed on April 13, 2012). The comment period ended on June 25, 2012.	American Chemistry Council		✓
	American Fuel & Petrochemical Manufacturers		✓
	American Iron & Steel Institute		✓
	American Petroleum Institute		✓
	CF Industries Holdings, Inc.		✓

	Chamber of Commerce		✓
	Edison Electric Institute		✓
	National Association of Manufacturers		✓
	National Council of Textile Organizations		✓
	National Mining Association		✓
	National Oilseed Processors Association		✓
	Printing Industries of America		✓
Toxic Substances Control Act (TSCA) Section 12(b) Export Notification Requirements. 40 CFR Part 707 Subpart D. Requires companies to notify EPA when they export or intend to export to a foreign country chemical substances or mixtures that are subject to certain rules or orders under TSCA.	American Petroleum Institute		✓
Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver, 77 Fed. Reg. 28,772 (final rule on May 16, 2012).	American Petroleum Institute		✓
Ultra Low Sulfur Diesel Labeling Rule. 40 CFR 80.572(a).	American Petroleum Institute		✓
National Pollutant Discharge Elimination System (NPDES): Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting, 75 Fed. Reg. 35,712 (proposed rule June 23, 2010).	American Petroleum Institute		✓
ENERGY STAR® program. EPA has duplicated testing requirements on top of the Department of Energy's final rule on certification, compliance and enforcement for the ENERGY STAR program. EPA now requires third-party certification for all ENERGY-STAR qualified products.	American Express		✓
	American Lighting Association		✓
	Business Roundtable		✓
	Consumer Electronics Association		✓
Definition of Solid Waste, 76 Fed. Reg. 44,094 (proposed July 22, 2011). The EPA is proposing to revise certain exclusions from the definition of solid waste for hazardous secondary materials intended for reclamation that would otherwise be regulated under the Resource Conservation and Recovery Act.	American Coatings Association		✓
	American Express		✓
	American Iron & Steel Institute		✓
	American Petroleum Institute		✓
	Anthracite Region Independent Power Producers Association		✓
	Business Roundtable		✓

	IPC, The Association Connecting Electronics Industries		✓
	National Federation of Independent Business		✓
	Non-Ferrous Founders' Society		✓
	Society of Chemical Manufacturers & Affiliates		✓
Classifying oil and gas wastes as hazardous wastes under the Resource Conservation and Recovery Act (RCRA).	Conoco-Phillips, Inc.		✓
Wetland Permitting Process	American Road & Transportation Builders Association		✓
Clean Air Act Transportation Conformity Process	American Road & Transportation Builders Association		✓
Outer Continental Shelf (OCS) Permitting and Air Pollution Compliance	Conoco-Phillips, Inc.		✓

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq: On April 25, 2012, the EEOC released guidance on criminal background checks performed by employers. The guidance differs substantially from a 1987 policy statement released by the EEOC, causing confusion among employers.	American Express		✓
	American Meat Institute		✓
	Business Coalition for Fair Competition		✓
	Business Roundtable		✓

FEDERAL COMMUNICATIONS COMMISSION

REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Empowering Consumers to Avoid Bill Shock Consumer Information and Disclosure (FCC 10-180): The Federal Communications Commission proposes rules that would require mobile service providers to provide usage alerts and information that will assist consumers in avoiding unexpected charges on their bills.	CTIA--The Wireless Association	✓	
FFC Form 355: Television broadcasters must prepare each calendar quarter a new disclosure form and to place the form in their public inspection files.	National Association of Broadcasters	✓	
National Broadband Plan: As directed by Congress, the FCC developed a plan to concerning access to broadband capability.	Edison Electric Institute	✓	
Outdated Regulations: Need to modify current regulations to reflect technological advancements.	American Express		✓

	Business Roundtable		✓
Regulation of the Internet	American Express		✓
	Business Roundtable		✓
Potential Anti-Piracy Legislation: Fear that Congress will pursue anti-piracy legislation that will negatively impact open communication.	Consumer Electronics Association		✓
Cellular Licensing Proceeding: Licensees in the 850 mhz cellular band must file license modifications with the FCC each time they make a network adjustment. A Notice of Proposed Rulemaking was released in 2012 to review and modify this process.	CTIA-The Wireless Association		✓
Telephone Consumer Protection Act: The FCC has not yet addressed whether a consumer's request to opt out of a program, like text messaging, is a violation of the Telephone Consumer Protection Act.	CTIA-The Wireless Association		✓
Form 477: Requires broadband providers to provide semi-annual reports on where and how many customers they serve.	CTIA-The Wireless Association		✓
Form 499: Requires companies to file quarterly reports about revenue data. A Notice of Proposed Rulemaking was released in 2012 to examine the frequency of these reports.	CTIA-The Wireless Association		✓
User-Funded Cost Recovery: Extensive reporting requirements.	National Telecommunication Cooperative Association		✓
Must Carry Rules: (to be codified at 47 CFR 76.64): Requires cable companies to carry local broadcast stations.	The Heritage Foundation		✓
Using Quantile Regression Analysis for Universal Service Support. 77 Fed. Reg. 100 (to be codified at 47 CFR 36): A statistical method the FCC uses to decide the validity of a company's network infrastructure investments in relation to a peer group.	U.S. Telecom		✓
Legacy Telephone Regulations	U.S. Telecom		✓

FEDERAL RAILROAD ADMINISTRATION

REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Railroad Safety Enhancement Act of 2008, Pub. L. No. 110-432: Rail Safety Improvement Act of 2008 - (Sec. 3) Authorizes appropriations for FY2009-FY2013 for: (1) railroad safety; (2) the purchase of Gage Restraint Measurement System vehicles and track geometry vehicles or other comparable technology to assess track safety; and (3) construction of the Facility for Underground Rail Station and Tunnel at the Transportation Technology Center, Inc., in Pueblo, Colorado.	Association of American Railroads	✓	

FEDERAL RESERVE BOARD

REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Debit Card Interchange Fees and Routing (rule July 20, 2011, to be codified at 12 C.F.R. pt. 235): FRB established standards for debit card interchange fees, regulations governing network fees, and prohibitions against network exclusivity arrangements and routing restrictions, as required by §1075 of Dodd-Frank.	Credit Union National Association	✓	
	Financial Services Roundtable	✓	✓
	Small Business & Entrepreneurship Council	✓	
Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, 77 Fed. Reg. 594 (proposed January 5, 2012) (to be codified at 12 C.F.R. pt. 252): FRB proposed these rules drawing up rules to address capital requirements and surcharges for banks, as required by Dodd-Frank.	American Express		✓
	Business Roundtable		✓
	Financial Services Roundtable	✓	✓
	U.S. Chamber of Commerce		✓
Escrow Requirement Changes (76 Fed. Reg. 11598, (March 2, 2011) (to be codified at 12 C.F.R. pt. 226): FRB proposed this rule, which exempts creditors from the escrow requirements for higher-priced mortgage loans (HPMLs). (§1461 of Dodd-Frank amends TILA, or Regulation Z, to impose a mandatory escrow account requirement for first lien HPMLs).	Independent Community Bankers of America		✓

<p>Privacy of Consumer Financial Information (Regulation P) (codified at 12 C.F.R. pt. 216): FRB released this rule, which governs how financial institutions use nonpublic personal information about consumers (i.e. financial services providers must send a privacy notice to a customer annually, even if privacy practices at the financial institution have not changed).</p>	American Financial Services Association		✓
	Credit Union National Association		✓
	Independent Community Bankers Association		✓
<p>Gramm-Leach-Bliley Act (GLB) Annual Privacy Notice Requirement: GLB and its implementing regulations require certain financial institutions to provide an initial privacy notice to their customers about the company's information sharing practices with third parties. Privacy notices must be provided on an annual basis thereafter for the duration of the customer relationship.</p>	Debt Buyers Association International		✓
<p>Fair Credit Reporting Risk-Based Pricing Rule, 16 C.F.R. §§640, 698 (2010): FRB and FTC issued a rule that generally requires a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor.</p>	National Automobile Dealers Association	✓	
<p>Electronic Fund Transfer Act, Regulation E § 206.16, Disclosures at Automated Teller Machines (ATMs): Under Regulation E, ATM operators that impose fees on consumers for withdrawing funds/ inquiring about balances must disclose the amount of any fee or operator charges. The operator must disclose the fee on the ATM screen or in a paper notice before the consumer pays the fee. In addition, the operator must post a sign on the ATM itself that fees "will" or "may be imposed."</p>	Credit Union National Association		✓
	Independent Community Bankers Association		✓

FEDERAL TRADE COMMISSION			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
<p>FTC Report: Protecting Consumer Privacy in an Era of Rapid Change (December 2010): Language suggesting there will be new regulations on the geospatial industry.</p>	Business Coalition for Fair Competition		✓

GENERAL SERVICES ADMINISTRATION			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Leadership in Environmental Energy and Design Program. The Energy Independence and Security Act of 2007 Pub.L. 110-140: Green building rating standards for federal agency use.	American Chemistry Council		✓
	American Coatings Association		✓
	Construction Industry Round Table		✓
	National Asphalt Pavement Association		✓
	National Association of Home Builders		✓
The Federal Supply Schedule Program/GSA Schedule Contracting (to be codified at 48 CFR 8.403(c): Provides for the acquisition of private firms for architectural and engineering services through contracts.	Business Coalition for Fair Competition		✓

INTERNAL REVENUE SERVICE			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
1099 Reporting Mandate: Patient Protection and Affordable Care Act (PPACA). The reporting requirement was repealed in 2011.	American Bakers Association	✓	
	American Express	✓	
	Associated Builders and Contractors	✓	
	Business Roundtable	✓	
	Manufacturing Jewelers & Suppliers of America	✓	
	National Community Pharmacists Association	✓	
	Small Business & Entrepreneurship Council	✓	
3% Withholding Mandate: Tax Increase Prevention and Reconciliation Act of 2005. This mandate was repealed in 2011.	Aerospace Industries Association	✓	
	Associated Builders and Contractors	✓	
	Computing Technology Industry Association	✓	
	Government Withholding Relief Coalition	✓	
	National Asphalt Pavement Association	✓	
	Small Business & Entrepreneurship Council	✓	
Interpretation of Section 199 of the Internal Revenue Code	Institute of Scrap Recycling Industries	✓	
Deduction and Capitalization of Expenditures Related to	Textile Rental Services	✓	

Tangible Property	Association		
IRS Definition of Affordability. Proposed Rule. 76 Fed. Reg. 159 (to be codified at 26 CFR 1): An employee’s self-only premium for an employee-sponsored plan should not be considered “affordable” if it exceeds 9.5% of their W-2 wages from that employer.	American Express		✓
	Business Roundtable		✓
Coverage of Employee Dependents. IRS Notice 2011-36: IRS suggested agencies might require employers to offer coverage to dependents of employees.	American Express		✓
	Business Roundtable		✓
Patient Protection on Affordable Care Act. Section 9002: Requires employers to report the cost of coverage under an employer-sponsored health plan on W-2 forms.	American Express		✓
	Business Roundtable		✓
Definition of Part-time and Full-time Employees. Section 4980H (added to Internal Revenue Code by the Patient Protection and Affordable Care Act): The IRS considers an individual who works at least 130 hours per month or 30 hours per week as a full-time employee.	American Express		✓
	Business Roundtable		✓
Employer Reporting Requirements. Notice 2012-32: Requires employers to submit paperwork to the IRS for each individual who receives minimum essential coverage and provide a report to the employee.	American Express		✓
	Business Roundtable		✓
	Retail Industry Leaders Association		✓
Federal tax code	American Hardware Manufacturers		✓
	Construction Industry Roundtable		✓
Business taxes	American Hardware Manufacturers		✓
	Consumer Electronics Association		
Rules for tax exempt institutions: The assets of a tax-exempt institution cannot be used to benefit a private individual.	American Hospital Association		✓
Look-back Method. IRC § 460(b)(2): A process by which taxpayers provide documentation to prove that tax payments made in previous years were appropriate.	Construction Industry Roundtable		✓
Need for repatriated tax holiday	Consumer Electronics Association		✓
Interest Paid to Non-Resident Aliens. 76 Fed. Reg. 5 (to be codified at 26 CFR 1 and 31): Requires the reporting of interest paid to non-resident aliens.	U.S. Chamber of Commerce		✓
Treasury, IRS, Guidance on Reporting Interest Paid to Nonresident Aliens, 77 Fed. Reg. 23391, (April 19, 2012) (to be codified at 26 C.F.R. pts. 1, 31): The Internal Revenue Service (IRS), within the U.S. Department of the Treasury (Treasury), released this final rule, which requires banks to report to the IRS the amount of interest they pay to non-resident aliens with U.S. bank accounts.	U.S. Chamber of Commerce		✓
Treasury, IRS, Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property, 76 Fed. Reg. 81060 (Dec. 27, 2011) (to be codified at 26 C.F.R.	Retail Industry Leaders Association		✓

<p>pt 1): The Internal Revenue Service (IRS), within the U.S. Department of the Treasury (Treasury), released regulations related to business expenditures to repair or alter tangible property (i.e. buildings). These regulations went into effect on January 1, 2012.</p>			
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<p align="center">NATIONAL LABOR RELATIONS BOARD</p>			
<p>REGULATION/STATUTES/POLICIES</p>	<p>ORGANIZATION/BUSINESS</p>	<p>2011</p>	<p>2012</p>
<p>NLRB Governing Notification of Employee Rights under the National Labor Relations Act (NLRA), 75 Fed. Reg. 80420 (proposed Dec. 22, 2010) (to be codified to 29 C.F.R. pt. 104): On August 30, 2011, the National Labor Relations Board issued a final rule that requires employers subject to the National Labor Relations Act (NLRA) to post a notice of select employee rights under the NLRA. The rule is on hold pending court challenges.</p>	Agricultural Retailers Association		✓
	Associated Builders and Contractors, Inc.	✓	✓
	Brick Industry Association		✓
	Forging Industry Association	✓	
	Motor and Equipment Manufacturers Association	✓	✓
	National Association of Manufacturers		✓
	National Council of Textile Organizations	✓	✓
	National Restaurant Association	✓	
	Non-Ferrous Founders' Society	✓	
	Textile Rental Services Association	✓	
	U.S. Chamber of Commerce		✓
	Western Growers Association		✓
<p>NLRB's "Quickie Election" Rule: On December 22, 2011, the NLRB issued a final rule that alters the procedures for union organizing elections. In May 2012, the U.S. District Court for the District of Columbia invalidated the rule on the basis that the NLRB lacked the quorum required when it issued the rule. The fate of this rule is uncertain as the NLRB could reissue it with a quorum.</p>	Agricultural Retailers Association		✓
	American Bakers Association		✓
	American Frozen Food Institute		✓
	American Trucking Association		✓
	Associated Builders & Contractors		✓
	Brick Industry Association		✓
	Interlocking Concrete Pavement Institute		✓
	Motor and Equipment Manufacturers Association		✓
	National Association of Manufacturers		✓
	National Council of Textile Organizations		✓
	National Federation of Independent Business		✓
	Non-Ferrous Founders' Society		✓
	Printing Industries of America		✓
	Retail Industry Leaders Association		✓
	The Heritage Foundation		✓
U.S. Chamber of Commerce		✓	
<p>NLRB Decision in <i>Specialty Healthcare</i> changing the</p>	Retail Industry Leaders		✓

criteria for determining the appropriateness of a bargaining unit.	Association		
NLRB’s extension of an employee’s right to post criticism of his employer on social networking sites. If a company interferes with the posting of such criticism “it is interfering with, restraining and coercing employees in the exercise of the rights guaranteed in section 7” (of the NLRA).	Western Growers Association		✓
NLRB’s reversal of preserving an employer’s private property rights. NLRB has indicated that it will grant union organizers the right to enter an employer’s premises to conduct union organizing activity.	Western Growers Association		✓

NATIONAL MARINE FISHERIES SERVICE			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
National Marine Fisheries Service Draft Environmental Impact Statement for Arctic oil & gas (December 2011): The agency outlines what it views as appropriate oil and gas activities in the U.S. Beaufort and Chukchi seas.	American Land Title Association		✓

OFFICE OF GOVERNMENT ETHICS			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Executive Branch Employees Ethical Standards. Proposed Rule. 76 Fed. Reg. 177 (to be codified at 5 CFR Part 2635): Office of Government Ethics proposed a rule that would bar executive branch employees from attending free events, such as receptions, hosted by trade associations.	American Forest and Paper Association		✓

SECURITIES AND EXCHANGE COMMISSION			
REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
Disclosure of Payments by Resource Extraction Issuers, 75 Fed. Reg. 80978 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 229, 249): SEC issued a proposed rule requiring resource extraction issuers to report annually information relating to any payment made by the issuer, or by a subsidiary or another entity controlled by the issuer, to a foreign government or the federal government for the purpose of the commercial development of oil, natural gas, or minerals.	American Express		✓
	American Petroleum Institute (API)		✓
	Business Roundtable	✓	✓
	ConocoPhillips	✓	✓
Mine Safety Disclosure, 75 Fed. Reg. 80374 (proposed Dec. 15, 2010) (to be codified at 17 C.F.R. pt. 229, 239, 249): SEC	Business Roundtable	✓	

issued a proposed rule to outline the way mining companies must disclose certain information about mine safety and health standards to investors.			
Conflict Minerals, 75 Fed. Reg. 80948 (proposed Dec. 23, 2010) (to be codified at 17 C.F.R. pt. 229, 249): SEC issued a proposed rule that would require any issuer for which conflict minerals are necessary to the functionality or production of a product manufactured, or contracted to be manufactured, by that issuer to disclose in the body of its annual report whether its conflict minerals originated in the Democratic Republic of the Congo or an adjoining country.	American Petroleum Institute	✓	
	American Express		✓
	Boeing	✓	
	Business Roundtable	✓	✓
	National Tooling and Machining Association		✓
	Precision Machined Products Association		✓
	Precision Metalforming Association		✓
	IPC – Association Connecting Electronics Industries	✓	✓
	Consumer Electronics Association		✓
	Manufacturing Jewelers and Suppliers of America	✓	✓
	CTIA- Wireless Association		✓
	National Association of Manufactures		✓
	National Electrical Manufacturers Association	✓	
	Motor & Equipment Manufacturers Association		✓
U.S. Chamber of Commerce		✓	
Whistleblower Incentives and Protection, 76 Fed. Reg. (final rule Aug. 25, 2011) (to be codified at 17 C.F.R. pt. 165): SEC issued a final rule to implement whistleblower provisions in Dodd Frank whereby whistleblowers will receive 10-30% of any fine over \$1 million that is a result of original information provided to SEC that leads to the successful enforcement of a covered action.	American Express	✓	
	Boeing	✓	
	Business Roundtable	✓	
	U.S. Chamber of Commerce		✓

Shareholder Approval of Executive Compensation and Golden Parachute Compensation 76 Fed. Reg. 6010 (to be codified at 17 C.F.R. pts. 229, 240, 249) (Feb. 2, 2011): SEC issued a final rule relating to shareholder approval of executive compensation and “golden parachute” compensation arrangements as required under Dodd-Frank.	American Express	✓	
	Business Roundtable	✓	
CEO Pay Ratio Disclosure: Dodd-Frank requires certain companies to file reports with SEC to disclose the following compensation metrics: the annual total compensation of the chief executive officer; the median annual total compensation for all employees (but CEO); and a ratio of these two metrics.	American Express	✓	
	Business Roundtable	✓	
Mandatory Clawbacks: Dodd-Frank requires companies listed on a U.S. stock exchange to implement and disclose a policy requiring a company to clawback incentive-based compensation paid to current or former executive officers if the company is required to restate its financials due to material non-compliance with financial reporting requirements.	American Express	✓	
	Business Roundtable	✓	
Facilitating Shareholder Director Nominations (“Proxy Access”) (to be codified at 17 C.F.R. pts. 200, 232, 240, 249): In August 2010, SEC issued a final rule that requires companies to include board of director nominees by certain shareholders in their proxy materials. However, the rule was struck down by the U.S. Court of Appeals for the District of Columbia on July 22, 2011.	American Express	✓	
	Business Roundtable	✓	
President’s Working Group Report on Money Market Fund Reform, Release No. IC-29497; File No. 4-619: SEC is seeking comment on the options discussed in the President’s Working Group on Financial Markets’ study of possible money market fund reforms. One of the proposals considers moving away from the current stable net asset values (NAVs) to a floating NAV.	Boeing	✓	
Sarbanes-Oxley Act (SOX), Pub. L. No. 107-204, § 404(b), 116 Stat. 745 (2002): SOX Section 404(b) requires public companies to conduct a review of internal controls over financial reporting and include an external auditor attestation report of those controls in their annual filings.	Biotechnology Industry Organization	✓	
Chairman/CEO Disclosures: § 972 of Dodd-Frank directs SEC to adopt rules requiring companies to disclose leadership structure of a company and why the company has determined that this leadership structure is appropriate.	U.S. Chamber of Commerce		✓
Money Market Mutual Fund Reform: SEC made significant changes to money market funds regulation under the Investment Company Act of 1940 two years ago. The proposed rule is expected to be issued this year.	U.S. Chamber of Commerce		✓
Mandatory Audit Firm Rotation: The Public Company Accounting Oversight Board (PCAOB) is considering a concept release to issue a proposal mandating public companies to rotate their audit firms periodically. This release would have to go through SEC rulemaking process.	U.S. Chamber of Commerce		✓

Municipal Advisor Registration Requirement: §975 of Dodd-Frank amended the Securities Exchange Act of 1934, making it “unlawful” for a municipal advisor to provide advice to or undertake a solicitation of a municipal entity unless the municipal advisor is registered with SEC and the Municipal Securities Rulemaking Board.	Independent Community Bankers of America		✓
Guidance of Loss Contingencies: The Financial Accounting Standards Board (FASB) dropped a proposal to expand the disclosure requirement for businesses to estimate their liability when sued. SEC is requiring these expanded disclosures, dropped by FASB, without approval or notice and comment.	U.S. Chamber of Commerce		✓
Guidance on Cybersecurity and Network Neutrality: SEC released guidance regarding public company disclosure obligations relating to cybersecurity risks and net neutrality. It is unclear what statutory authority the SEC had to take policy preferences outlined in both guidance documents.	CTIA Wireless Association		✓

MISCELLANEOUS

REGULATION/STATUTES/POLICIES	ORGANIZATION/BUSINESS	2011	2012
European Union Emissions Trading: U.S. airlines are forced to purchase emission allowances in accordance with European Union rules.	Airlines for America		✓
Interagency Working Group Proposal to Restrict Advertising to Children: Nutrition principles released by the Interagency Working Group differ substantially from the USDA’s Dietary Guidelines for Americans.	American Bakers Association		✓
Federal Contractor Reporting on Composition of the Workforce	American Hardware Manufacturing Association		✓
Agency Guidance: Use of guidance to circumvent traditional formal rulemaking process.	American Hospital Association		✓
	National Stone, Sand and Gravel Association		✓
Anti-Trust Laws: Need for Department of Justice’s Anti-Trust Division and the Federal Trade Commission to clarify how clinical integration programs can properly abide by anti-trust law.	American Hospital Association		✓
Expectation of New Regulations	Associated Builders and Contractors		✓
Cost-Benefit Analyses: Need for agencies to engage in exhaustive cost-benefit analysis when weighing whether to take regulatory action.	American Hardware Manufacturers Association		✓
	Commodity Markets Council		✓
	Ford Motor Council		✓
	HR Policy Association		✓
	Mercatus Center		

Federal Acquisition Regulation 48 CFR 1.101: Requires the federal government to choose engineering and architecture firms based on competency and experience instead of price.	Business Coalition for Fair Competition		✓
	Construction Industry Roundtable		✓
	International Bottled Water Association		✓
OMB Notice of Proposed Policy Letter in response to President's March 4, 2009, Memorandum on Government Contracting: Increases insourcing, the process by which jobs traditionally performed by private sector employees are instead given to public employees.	Business Coalition for Fair Competition		✓
Federal Greenhouse Gas Accounting and Reporting Guidance (October 6, 2010) in response to Executive Order (E.O.) 13514: Explains how federal agencies should measure the impact of climate change and greenhouse gas emissions.	Conoco Phillips, INC		✓
Council on Environmental Quality March 6, 2012 Guidance on National Environmental Policy Act: Seeks public input on previously approved rules.	Conoco Phillips, INC		✓
"Disclosure of Political Spending by Government Contractors" 2011 Draft Executive Order: If enacted, this Executive Order would have politicized federal procurement decisions by establishing new reporting requirements for private companies competing for public contracts. Specifically, private companies would have needed to provide information about political contributions.	Construction Industry Roundtable		✓
	The Associated General Contractors of America		✓
Procurement: Each federal agency currently develops their own set of procurement policies.	Construction Industry Roundtable		✓
Qualifications for Quality Control Personnel: Unclear whether practical experience can be considered in lieu of an engineering degree.	Construction Industry Roundtable		✓
Tariffs on Imported Products	Consumer Electronics Associations		✓
Endangered Species Act: Fish and Wildlife Service and National Oceanic Atmospheric Administration enforcement of strict pesticide regulations limits agricultural output.	CropLife America		✓
Energy Policy Act of 2005: Gave Federal Energy Regulatory Commission and other agencies power to facilitate transmission construction.	Edison Electric Institute		✓
Administration's Proposed National Ocean Policy: Would alter permitting criteria for many industries	Independent Petroleum Association of America		✓
Out of Date International Trade Agreements	Consumer Electronics Association		✓
Department of Treasury's reporting requirements for prepaid access and gift cards	Retail Industry Leaders Association		✓

Sodium Consumption: The CDC, FDA, HHS and USDA have encouraged consumers to reduce their sodium intake.	Salt Institute		✓
DATA ACT Agency Conference Attendance Provisions. Section 712: Trade associations can no longer invite agency officials to a conference with industry representative more than once per year.	The Associated General Contractors of America		✓
The Credit Card Accountability, Responsibility and Disclosure Act (CARD Act) of 2009, Pub. L. No. 111-124: CARD Act amended TILA to impose new federal limits on how credit-card issuers can adjust interest rates and impose penalty fees on customers, among other things.	American Financial Services Association		✓
Federal Credit Union Act (FCUA), Pub. L. No. 90-188: FCUA requires credit unions to have 7% net worth to be considered well-capitalized and 6% net worth to be adequately capitalized. FCUA also requires a statutory cap on credit union lending, (the lesser of 1.75 times the minimum net worth of a well-capitalized credit union or 1.75% of the credit union's actual net worth).	Credit Union National Association	✓	✓
Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) of 2008, Pub. L. No. 110-289: Regulators, specifically at the state level, have broadened the scope of regulated activity to include those who perform administrative and clerical tasks as mortgage loan originators, even if they do not offer or negotiate loan terms for compensation or gain.	Manufactured Housing Institute	✓	
Joint Agency Red Flags Rule, 12 C.F.R. § 41 (2007): In 2007, pursuant to the Fair and Accurate Credit Transactions Act of 2003 (FACTA), the OCC, FRB, FDIC, OTS, NCUA and FTC jointly issued rules that require financial institutions and creditors to develop and implement identify theft programs. The programs must include identification, detection and response to patterns, practices, or specific activities that could indicate identity theft.	American Land Title Association National Automobile Dealers Association	✓ ✓	
Electronic Disclosure Requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (2000) Pub. L. No. 106-229: The E-Sign Act was meant to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.	American Financial Services Association		✓
Transaction Account Guarantee (TAG) Program: FDIC's TAG program full insurance coverage for certain transaction accounts, including transaction accounts for consumers and businesses, above \$250,000. Dodd-Frank provided an extension of the program through Dec. 31, 2012.	Independent Community Bankers of America		✓
Property Appraisal Requirements: §1471 of Dodd-Frank requires appraisal methods for certain types of mortgages based on a method designed to value site-built homes. The appraisal requirement relies on a model designed for the site-built housing market that has little applicability to manufactured housing.	Manufacturing Housing Institute		✓
Availability of AD&C Loans: The home building industry continues to experience a significant adverse shift in terms and availability on land acquisition, land development and home construction (AD&C) loans, and builders with outstanding	National Association of Homebuilders		✓

loans are facing mounting challenges.			
Duplication and Overlap of the U.S. insurance regulation: Insurance in the United States is made up of 56 insurance jurisdictions, each with its own regulations, procedures, and legal definitions of insurance.	Financial Services Roundtable		✓
Use of Proxy Advisory Services by ERISA Managers: Many investment managers of Employee Retirement Income Security Act (ERISA) accounts outsource their voting decisions to proxy advisory firms. However, there is some concern that outsourcing of proxy voting does not encourage decisions that are in the best economic interest of ERISA pension funds.	U.S. Chamber of Commerce		✓

About the Committee

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. It has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. The Committee's mandate is to investigate and expose waste, fraud and abuse.

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