TESTIMONY

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before the

Committee on Small Business
U.S. House of Representatives

Hearing on

Tangled in Red Tape: New Challenges for Small Manufacturers

March 18, 2015

Mr. Chairman, ranking member Velázquez, and members of the committee, I appreciate the opportunity to testify today on why ensuring a robust regulatory system is both necessary to and consistent with a strong economy in which smaller manufacturers can prosper and thrive.

I am a Senior Policy Analyst at the Center for Progressive Reform (CPR). Founded in 2002, CPR is a network of sixty scholars across the nation dedicated to protecting health, safety, and the environment through analysis and commentary. It has a small professional staff primarily funded by foundations. I have had the privilege of working as a member of this staff since 2008, during which time my portfolio has included regulatory policy and process, scientific integrity in government decision-making, and citizen access to the courts.

In my testimony today, I will make three points related to the hearing topic:

1. Regulations are essential for safeguarding the public. The Occupational Safety and Health Administration's (OSHA) silica rule provides a clear illustration. Once completed, this rule would save up to 700 lives and prevent up to 1600 new cases of silicosis every year.
2. Regulations can and do provide important economic benefits for smaller businesses, including those in the manufacturing sector.
3. The Small Business Administration's (SBA) Office of Advocacy is supposed to be helping small businesses on regulatory matters, but in fact works directly against their interests.

Based on these three points, I will conclude by proposing an alternative approach to balancing public safeguards and the unique interests of real small businesses. We can help small

businesses and have strong public protections all at the same time. We do not have to choose between them. The path forward should focus on "win-win" regulatory solutions that involve finding ways to help small businesses meet their regulatory obligations but without undermining their ability to compete.

Regulations are Essential for Protecting the Public

Over the past four decades, U.S. regulatory agencies have achieved remarkable success in establishing safeguards that protect people and the environment against unreasonable risks. During the 1960s and 1970s, rivers caught fire, cars exploded on rear impact, workers breathing benzene contracted liver cancer, and chemical haze settled over the industrial zones of the nation's cities and towns. But today, the most visible manifestations of these threats are under control, millions of people have been protected from death and debilitating injury, and environmental degradation has been slowed and even reversed in some cases. In short, the United States is much better off because of the regulations adopted over the past 40 years. But serious hazards remain, and indeed new ones continue to emerge as new technologies develop and the U.S. economy evolves. Americans would be even better protected if the gaps that leave them and their environment vulnerable to unnecessary risks were closed.

To gauge the positive impact of regulation on Americans' lives, consider:

- The White House Office of Management and Budget (OMB) estimates that regulatory benefits exceed regulatory costs by about 8 to 1 for significant regulations.[1] The Environmental Protection Agency (EPA) estimates that the regulatory benefit of the Clean Air Act exceeds its costs by a 25-to-1 ratio.[2]
- The failure to regulate some hazards related to the workplace, the environment, product safety, food safety, and more, and the failure to enforce existing regulations on such hazards results in thousands of deaths, tens of thousands of injuries, and billions of dollars in economic damages every year. Sometimes, the damages are spectacular on a world-wide scale. The BP Oil Spill caused tens of billions of dollars in damages.[3] The Wall Street collapse may have caused trillions. Regulation to prevent catastrophe can be far cheaper, and less painful, than cleaning up damage to lives, property, and the environment later.[4]

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[1] OFFICE OF MGMT. & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, DRAFT 2014 REPORT TO CONGRESS ON THE BENEFITS AND COSTS OF FEDERAL REGULATIONS AND UNFUNDED MANDATES ON STATE, LOCAL, AND TRIBAL ENTITIES 11, *available at* https://www.whitehouse.gov/sites/default/files/omb/inforeg/2014_cb/draft_2014_cost_benefit_report-updated.pdf.

[2] ENVTL. PROTECTION AGENCY, THE BENEFITS AND COSTS OF THE CLEAN AIR ACT FROM 1990 TO 2020, 7-9 (Mar. 2011), *available at* http://www.epa.gov/oar/sect812/feb11/fullreport.pdf.

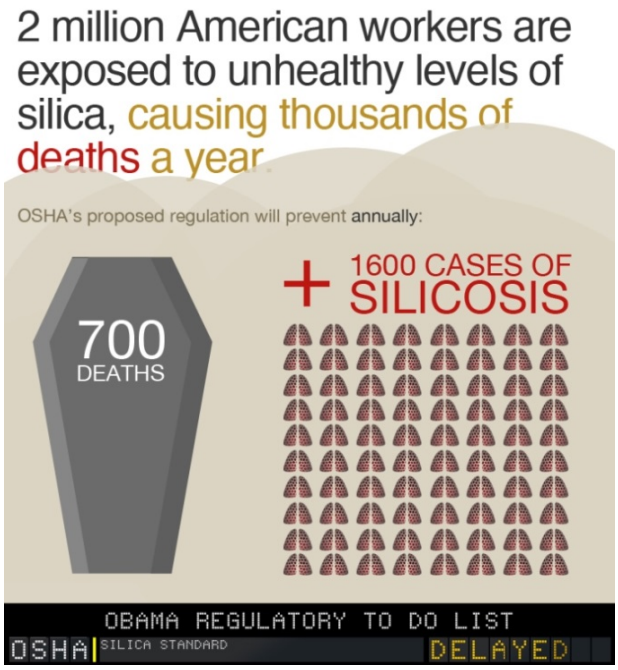
[3] *See* Aaron Smith, *BP: We've Spent $2 Billion on Clean-Up*, CNNMONEY, June 21, 2010, *available at* http://money.cnn.com/2010/06/21/news/companies/bp_oil_spill/index.htm. In June of 2010, Credit Suisse predicted that the total costs would be around $37 billion, with $23 billion in clean-up costs and $14 billion in settlement claims. Linda Stern, *Gulf Oil Spill Could Cost BP as Much as $37 Billion*, MONEYWATCH.COM, June 8, 2010, *available at* http://moneywatch.bnet.com/economic-news/blog/daily-money/gulfoil-spill-could-cost-bp-as-much-as-37-billion/728/.

[4] OFFICE OF MGMT & BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT, FISCAL YEAR 2012: ANALYTICAL PERSPECTIVES: BUDGET OF THE U.S. GOVERNMENT 47 (2011), *available at*

- Dozens of retrospective evaluations of regulations by the EPA and OSHA have found that the regulations were still necessary and that they did not produce significant job losses or have adverse economic impacts for affected industries, including small businesses.[5]

Individual examples of regulatory successes paint an even more compelling portrait. The EPA estimates Clean Air Act rules saved 164,300 adult lives in 2010, and will save 237,000 lives annually by 2020. The National Highway Traffic Safety Administration's vehicle safety standards have reduced the traffic fatality rate from nearly 3.5 fatalities per 100 million vehicle miles traveled in 1980 to 1.41 fatalities per 100 million vehicle miles traveled in 2006. An Endangered Species Act recovery program developed by the U.S. Fish and Wildlife Service helped increase the Bald Eagle population from just 400 nesting pairs in 1963 to 10,000 nesting pairs in 2007, enabling the Service to remove Bald Eagles from the Endangered Species List.[6]

The rules that the federal protector agencies are currently working on will add to this impressive track record. A case in point is OSHA's pending rule to protect workers against harmful silica exposures that might occur in the work place. Roughly 2 million U.S. workers in dozens of different industries toil in workplaces with silica levels high enough to threaten their health. As the dust swirls through workers' lungs, it causes lung tissue to swell and become inflamed. Workers experience difficulty breathing and, over time, develop scarring and stiffening of the lungs. The resulting condition, called silicosis, is debilitating, and the lung damage that comes with it can increase a person's risk of tuberculosis and lung cancer. OSHA estimates that thousands of workers die every year because of silica exposures that are *within the current legal limits*, which were set more than 40 years ago. These workers suffer just the same—whether they work for a smaller business or a larger one.



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www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/spec.pdf. The Congressional Budget Office (CBO), which employs a different methodology for calculating costs than does the OMB, estimates the costs of TARP to be $19 billion. CONG. BUDGET OFFICE, REPORT ON THE TROUBLED ASSET RELIEF PROGRAM—MARCH 2011, 1 (2011), *available at* http://www.cbo.gov/ftpdocs/121xx/doc12118/03-29-TARP.pdf. *See also* BARBARA BUTRICA, KAREN E. SMITH, & ERIC TODER, HOW WILL THE STOCK MARKET COLLAPSE AFFECT RETIREMENT INCOMES? 1 (The Urban Institute, Older Americans' Economic Security Report No. 20, 2009), *available at* http://www.urban.org/uploadedpdf/411914_retirement_incomes.pdf.

[5] Sid Shapiro et al., *Saving Lives, Preserving the Environment, Growing the Economy: The Truth About Regulation* 10, 20-30 (Ctr. for Progressive Reform, White Paper 1109, 2011), *available at* http://www.progressivereform.org/articles/RegBenefits_1109.pdf.

[6] *Id*. at 5-6.

Once in place, OSHA's pending silica proposal is expected to save up to 700 lives and prevent up to 1600 new cases of silicosis every year. This rulemaking has been in the works for over 17 years now, and the cost of these unnecessary delays has been thousands of deaths and debilitating illnesses that weren't prevented, but could have been. The proposal would update OSHA's outdated exposure limits for crystalline silica with a comprehensive rule that would require employers to limit their workers' exposure to silica dust and provide other protections including exposure monitoring and free medical exams when workers are exposed to dangerous levels of the dust.

Regulations Often Provide Economic Benefits for Small Businesses

The economic benefits of regulation for businesses can be significant, but are all too often overlooked. First and foremost, businesses receive a significant productivity dividend when their workers and their workers' families are healthy and safe. Public health and environmental regulations in particular have been vital in reducing "lost work" days and "restricted activity" days that can undermine a business's productivity—and by extension its competitiveness and profitability. For example, the EPA estimates that its Clean Air Act regulations prevented 13 million lost work days and 84 million restricted activity days in 2010.

Second, regulations can help to create new markets and opportunities for entrepreneurs. Energy efficiency regulations provide a good example. Already these standards are pushing American companies to develop more energy efficient products at lower costs. As a result, these products are now and will continue to be attractive both domestically and in foreign markets for consumers and businesses that desire to save money on their electricity bills and work on cutting down on their carbon footprints. Indeed, these standards can even help to ensure that American businesses are well-positioned to be the world's leader in manufacturing energy efficient products.

Regulations of toxic chemicals provide another example. The efforts of the EPA, OSHA, the Consumer Product Safety Commission, and other protector agencies to safeguard people and the environment against harmful exposures to BPA, phthalates, and other potentially endocrine-disrupting substances are spurring innovative technology startups to develop less harmful alternatives. The work of these firms and other high tech startups can provide the foundation for a whole new era in the chemical manufacturing industry—one that is based on safer and environmentally friendlier technologies.

Third, regulations can even spur businesses to revolutionize their production processes in ways that leads to great productivity and profitability. In 1978, OSHA issued the Cotton Dust rule to protect workers from harmful exposures to cotton dust, which can cause byssinosis (or "brown lung" disease). Much like silicosis, brown lung disease is debilitating and potentially fatal disease that significantly impairs lung function. OSHA found that the number of byssinosis cases among textile workers in the country declined from approximately 50,000 in the early 1970s to around 700 in the mid-1980s, a decline of 99 percent.[7] Significantly, though, the

[7] OCCUPATIONAL SAFETY & HEALTH ADMIN., OFFICE OF PROGRAM EVALUATION, REGULATORY REVIEW OF OSHA'S COTTON DUST STANDARD ii, 28-33 (2000), *available at* https://www.osha.gov/dea/lookback/cottondust_final2000.pdf.

investments these companies made in new equipment to comply with the rule also served to increase the industry's productivity and profitability. Indeed, in a 2000 retrospective review of the rule that OSHA conducted pursuant to the Regulatory Flexibility Act, the agency found that in the years prior to the rule's full implementation, the industry's productivity rate grew at a rate of roughly 2.5 percent. In the years after, however, the productivity growth rate had increased to 3.5 percent.[8]

Fourth, as recent episodes illustrate, when industrial-scale catastrophe results from a failure to regulate adequately, the attendant costs tend to fall disproportionately on small businesses. Think of all the small restaurants and cafés in Charleston, West Virginia, that had to close their doors for several days or even weeks following the 2014 spill of MCHM into the Elk River. Or think of all the small hotels, charter fisherman, and souvenir shop owners that were devastated by the ongoing fallout from the 2010 Gulf Oil spill. Here, I can speak from my personal experience. My uncle in Alabama has struggled to keep the doors open to our family's decades-old restaurant supply company after the 2010 BP oil spill, as the significant downturn in tourism has obliterated much of the company's customer base. Stronger regulations that are necessary for preventing these catastrophes or for minimizing their harmful consequences would thus deliver particularly large benefits to many small businesses that might otherwise be caught in harm's way.

The SBA Office of Advocacy Works Against Small Businesses, Not for Them

In the abstract, regulations do have a different impact on smaller businesses as compared to the larger ones with which they must compete. In many cases, the costs of complying with regulations can put smaller businesses at a competitive disadvantage with larger ones, which are better equipped to pass many of these costs along to their consumers. Larger businesses are also able to afford attorneys, engineers, accountants, and other compliance consultants, who can help them devise cheaper ways to fulfill regulatory requirements.

Partially out of concern for these differing impacts, Congress created the SBA Office of Advocacy to serve as a "voice for small businesses within the federal government." By any measure, though, the SBA Office of Advocacy's performance of this role has been a comprehensive failure. This isn't just my view. The Government Accountability Office (GAO) delivered a similarly scathing indictment of the SBA Office of Advocacy's performance in a report it published last July.[9]

Perhaps the single most important thing the SBA Office of Advocacy should be doing to fulfill its statutory mission is to actually solicit the input of real smaller businesses to obtain their unique views on government policies. In conducting its investigation, however, the GAO could find no evidence that the SBA Office of Advocacy ever interacts with smaller businesses in the course of conducting its duties.

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[8] *Id*. at 22, 35-38.

[9] U.S. GOV'T ACCOUNTABILITY OFF., SMALL BUSINESS ADMINISTRATION: OFFICE OF ADVOCACY NEEDS TO IMPROVE CONTROLS OVER RESEARCH, REGULATORY, AND WORKFORCE PLANNING ACTIVITIES (GAO-14-525, 2014), *available at* http://www.gao.gov/products/GAO-14-525.

Even the comment letters that the SBA Office of Advocacy develops and submits regarding pending agency rulemakings do not appear to be based on input that the SBA Office of Advocacy received from smaller businesses. In fact, of the 11 comment letters that the GAO reviewed that purported to incorporate input from small business representatives, the SBA Office of Advocacy was unable to provide the GAO any evidence—such as emails or notes of conversations—of this input. Moreover, the SBA Office of Advocacy could provide no evidence that the decision to even draft these comment letters was made in response to actual concerns that smaller businesses had raised with the Office.

The SBA Office of Advocacy tried to persuade the GAO that it had received input for its comment letters by periodically convening "roundtable" discussions in Washington, DC, but the GAO rightly found this explanation to be inadequate. Of the comment letters that the GAO reviewed, 19 percent purported to incorporate input from roundtables, but the SBA Office of Advocacy failed to provide the GAO with any written evidence—such as meeting minutes—that could demonstrate that the views expressed in the comment letters were actually based on discussions that took place at roundtables. Moreover, the GAO found that the SBA Office of Advocacy does not consistently take attendance at its roundtables discussions. Without any attendance lists for roundtables, it is impossible to verify whether small business representatives are actually present (as opposed to just lobbyists representing large corporations and trade associations) and that the viewpoints that are shared at the roundtables actually reflect the unique concerns of real small businesses.

So, if the SBA Office of Advocacy is not talking to real smaller businesses, then who are they talking to? Recent work by my organization, CPR, and the Center for Effective Government has found copious evidence of communications between the SBA Office of Advocacy staff and large trade associations that are dominated by their large businesses members. I have attached to this testimony, a report CPR issued last month that documents the close working relationship the SBA Office of Advocacy had developed with the American Chemistry Council to oppose OSHA's pending silica rule. I also commend to you two Center for Effective Government reports that also document the SBA Office of Advocacy's close work with large businesses and trade associations to oppose various rulemakings: *Small Businesses, Public Health, and Scientific Integrity: Whose Interests Does the Office of Advocacy at the Small Business Administration Serve?*[10] and *Gaming the Rules: How Big Business Hijacks the Small Business Review Process to Weaken Public Protections*.[11]

These reports, when read together with the GAO report, paint a disturbing picture of the SBA Office of Advocacy. They suggest that the Office has become too focused on attacking those regulations opposed by large corporations and trade associations to properly address the unique concerns of real smaller businesses in accordance with the agency's clear statutory mission. The end result is that smaller businesses are left in a worse position than they would be if the SBA Office of Advocacy didn't exist at all: They continue to lack a meaningful spot at the

[10] CTR. FOR EFFECTIVE GOV'T, SMALL BUSINESSES, PUBLIC HEALTH, AND SCIENTIFIC INTEGRITY: WHOSE INTERESTS DOES THE OFFICE OF ADVOCACY AT THE SMALL BUSINESS ADMINISTRATION SERVE? (2013), *available at* http://www.foreffectivegov.org/office-of-advocacy-report.

[11] CTR. FOR EFFECTIVE GOV'T, GAMING THE RULES: HOW BIG BUSINESS HIJACKS THE SMALL BUSINESS REVIEW PROCESS TO WEAKEN PUBLIC PROTECTIONS (2014), *available at* http://www.foreffectivegov.org/gaming-the-rules.

decision-making table while the larger corporations they compete against are able to have their already loud voice further amplified by what amounts to a taxpayer-funded advocate.

It's Time for a Reset: We Don't Have to Choose Between Small Businesses and Strong Public Protections

To move forward, we should begin to explore options for helping smaller businesses to meet their regulatory obligations in ways that do not undermine their ability to compete with the larger firms in their industry. In this way, the goal would not be to lower the standards that these smaller businesses must meet—as the SBA Office of Advocacy would have it. Instead, the goal would be to find ways to help those smaller businesses to comply with whatever measures are necessary to protect public health, safety, and the environment.

Over the years, Congress has taken some small steps toward various forms of enhanced compliance assistance for smaller business. With some creative thinking, these efforts can be expanded. Such creative solutions could include:

- **Providing monetary assistance to truly small businesses so that they can meet higher regulatory standards**. Monetary assistance could include direct subsidies to cover part or all of the costs of equipment upgrades required for regulatory compliance. Alternatively, the Small Business Administration (SBA) could work to obtain subsidized loans to help small businesses defray regulatory compliance costs.
- **Expanding regulatory compliance assistance programs**. The Small Business Regulatory Enforcement Fairness Act (SBREFA) established several compliance assistance programs, including requiring agencies to produce "compliance guides" for each of their rules that have a significant impact on small businesses. These compliance guides describe the rule and explain what actions small businesses need to take to comply. Congress can help improve the effectiveness of compliance guides by providing agencies with full funding to produce and distribute them.
- **Partnering small businesses to promote beneficial synergies on regulatory compliance**. For example, Congress could direct the SBA to establish a cooperative of small businesses within a given location, which could share the cost of compliance assistance services, such as those provided by accountants or engineering consultants. Alternatively, Congress could create an SBA-directed program that would build off the SBA's existing preferential government procurement and contracting policies by establishing mutually beneficial partnerships between participating small businesses. For instance, if a small business requires special services, such as accounting, to comply with a regulation, then the program would help to partner that business with another small firm that provides those special services. In this way, the SBA program can assure that one small business's compliance with regulations help to create a profitable market for another small business.

Thank you. I'd be pleased to answer any questions you might have.

The Small Business Charade

The Chemical Industry's Stealth Campaign Against Public Health

by CPR President Rena Steinzor
and
CPR Executive Director Matthew Shudtz and
CPR Senior Policy Analyst James Goodwin

February 2015

CPR CENTER FOR PROGRESSIVE REFORM

The Small Business Charade: The Chemical Industry's Stealth Campaign Against Public Health

Executive Summary

The Small Business Administration's Office of Advocacy is tiny and largely unaccountable, but it wields surprising power over the federal regulatory system. A steady stream of statutes and executive orders issued over the past three decades have imbued the Office of Advocacy with powerful supervisory authority over analytical and procedural requirements that regulatory agencies must satisfy before issuing rules on everything from worker safety to air pollution. In important ways, the Office of Advocacy's role in the regulatory system bears a striking resemblance to that played by the White House Office of Information and Regulatory Affairs (OIRA). Both operate to similar effect, functioning as an anti-regulatory force from within the regulatory structure, blocking, delaying, and diluting agency efforts to protect public health and safety.

Congress did not create the Office of Advocacy to play this role. Instead, by statute, the Office of Advocacy is supposed to advance the interests of small businesses that may lack the resources or expertise to field expansive lobbying efforts in Washington, especially in light of the lobbying efforts conducted on behalf of large corporations and trade associations, whose interests rarely align with those of real small businesses. The Office of Advocacy enjoys a privileged role in the rulemaking process because the law requires agencies to pay special attention to its objections and modify regulations to make them small businesses-friendly (*i.e.*, by not putting small businesses at a competitive disadvantage to larger firms within their sector) without sacrificing protections for public health, worker and consumer safety, and the environment.

To carry out this intended role, the Office of Advocacy could reach out to actual small business owners across the country to learn about the real challenges that government policies might pose for them. It could develop good working relationships with agency officials to help them achieve their statutory mission without unduly burdening small businesses. But in actual practice, the Office of Advocacy has pursued another agenda, focusing on forming alliances with big businesses, and especially trade associations that lobby on behalf of large corporate interests, and working to block any regulations that they might find inconvenient to their bottom line, even at the cost of properly safeguarding people and the environment.

The Occupational Safety and Health Administration's (OSHA's) ongoing efforts to draft new rules covering worker exposure to crystalline silica offer a striking example of how the strong ties between the Office of Advocacy and big-business trade associations threaten public health. In developing its response to OSHA's proposed silica standard, the Office of Advocacy has leaned heavily on the leading trade association representing multi-billion-dollar chemical companies inside the Beltway, the American Chemistry Council (ACC). For example:

- One-quarter of the small entity representatives who participated in the Small Business Advocacy Review Panel were nominated by advocates linked to ACC.

- ACC and its affiliates led discussions at "roundtable" meetings sponsored by the Office of Advocacy, which the Office of Advocacy later described as the primary source of information for its formal comments to OSHA.
- OIRA granted ACC-affiliated advocates eight closed-door meetings to discuss the proposed rule. Representatives from Advocacy participated in six of the eight meetings.
- One-third of the specific points that Advocacy raised in its formal comments on the rule overlap with points that ACC made in its formal comments.

For such behavior, the Government Accountability Office (GAO) recently issued a report that took the Office of Advocacy to task for failing to follow the basic policies and recordkeeping standards that would prove Advocacy's formal rulemaking comments actually reflect input received from small business representatives. The disturbing portrait portrayed in the GAO report aligns with the evidence laid out in this Issue Alert, reflecting the deep ties between the Office of Advocacy and the American Chemistry Council.

In order for the Office of Advocacy to comply with its statutory mandate and end its persistent misuse of taxpayer dollars, reforms are in order:

- Advocacy should establish and abide by new policies that ensure its staff work to advance the unique interests of small businesses within the bounds of occupational-safety, environmental, and consumer-protection laws.
- Congress should increase its oversight of the Office of Advocacy.
- The President should revoke Executive Order 13272, which gives the Office of Advocacy too much sway over other agencies' rulemaking processes.

Introduction

Silica dust is a slow, silent killer. Workers who cut concrete, brick, or tile, who put the finishing touches on drywall, or who mine sand or attend to fracking operations inhale the tiny crystalline particles throughout the day. Roughly 2 million U.S. workers in dozens of different industries toil in workplaces with silica levels high enough to threaten their health. As the dust swirls through workers' lungs, it causes lung tissue to swell and become inflamed. Workers experience difficulty breathing and, over time, develop scarring and stiffening of the lungs. The resulting condition, called silicosis, is debilitating, and the lung damage that comes with it can increase a person's risk of tuberculosis and even lung cancer. OSHA estimates that thousands of workers die every year because of silica exposures that are within legal limits.

In September 2013, after decades of research and 17 years of administrative wrangling, the Occupational Safety and Health Administration (OSHA) proposed updating its outdated exposure limits for crystalline silica with a comprehensive rule that would require employers to limit their workers' exposure to silica dust and provide other protections like exposure monitoring and free medical exams when workers are exposed to dangerous levels of the dust. Thus began an intense period of lobbying in which workers' advocates have urged OSHA to strengthen its proposal and business community lobbyists have expressed everything from qualified support to outright hostility.

At the extreme anti-regulatory end of the spectrum is the American Chemistry Council (ACC), which has gone so far as to assert that OSHA has failed to make the basic showing that silica presents a "significant risk" to workers' health at current exposure levels. Extensive scientific assessments by OSHA,

What is the American Chemistry Council and why do they care about silica?

ACC is a highly influential trade association comprising more than 180 companies that manufacture, import, and use chemicals. These companies include the biggest names in the chemical industry, from AkzoNobel to DuPont to W.R. Grace & Co., and a limited cadre of small businesses. The trade association employs a stable of lobbyists, risk assessment experts, economists, and consultants who operate on behalf of ACC's member companies to fight new government regulations that might cut into their bottom lines. As discussed in more detail below, ACC and its affiliates lobby Congress, litigate against regulatory agencies, and fund public relations campaigns aimed at forestalling regulations that would protect the public health.

Many of ACC's member companies use or manufacture silica-containing products. Its natural abundance and physicochemical properties make it useful for everything from hydraulic fracturing in natural gas fields to sandblasting finishes off of bridges and other major structures. ACC is also acting as a coordinator for non-members who want to weaken OSHA's proposed silica rules. U.S. Silica, for instance, is a leading manufacturer of silica, and although it is not a member of ACC, it is participating in the ACC Crystalline Silica Panel – a formal coalition of groups advocating against the rule, supported by ACC staff and consultants.

the National Institute for Occupational Safety and Health, the World Health Organization, and other neutral parties repudiate ACC's claim.[1] Drawing on its vast resources and political clout, ACC has been heavily involved at every step of the rule's development. For example, at OSHA's multi-day public hearing on the proposal, an event that is in many respects central to the agency's rulemaking process, ACC was a featured attraction, reserving an entire afternoon for testimony from its spokespeople and coordinating testimony with its member organizations that took up additional bits and pieces of eight more days. In total, testimony from lobbyists and other people affiliated with ACC and its members consumed more than 14 hours of the hearing, or about a quarter of the total hearing time. That is nearly as much as all of the unions, public interest groups, and their allies combined (that total was just under 18 hours).

The Small Business Administration's Office of Advocacy (Advocacy) is also taking part in the campaign to undermine OSHA's work on the silica rule. Congress's purpose in establishing the Office of Advocacy was to ensure that the unique small business perspective on such federal policies as OSHA's silica rule was accounted for. The extraordinary step of creating what amounts to a taxpayer funded lobbying shop reflects Congress's conclusion that the small business perspective might otherwise be overlooked because small businesses—genuinely small businesses, at least—lack the resources and sophistication to participate in the federal decision-making processes. But in the case of the silica rule, Advocacy's arguments against the proposal and those offered by the ACC are conspicuously similar. The evidence indicates that this similarity is not a coincidence, or even the result of parallel analysis and conclusions. Rather, it is the result of coordination between ACC and Advocacy. Email communications between Office of Advocacy staff and outside parties show that the agency, contrary to its clear statutory mission, takes its cues mostly from the major trade associations that are funded by and that primarily represent big businesses. Meanwhile, the true voice of small businesses is largely unheard.

This Issue Alert focuses on the connection between the Office of Advocacy and ACC with respect to one rule at one agency, but the problems run deeper than that. CPR's January 2013 White Paper, *Distorting the Interests of Small Business*,[2] documents Advocacy's pattern of hostility to proposed regulations that protect the public from a variety of environmental, health, workplace, and other hazards. Released at the same time, the Center for Effective Government's report, *Small Businesses, Public Health, and Scientific Integrity: Whose Interests Does the Office of Advocacy at the Small Business Administration Serve?*,[3] highlights how Advocacy has even fought against environmental and public health agencies' efforts to develop the basic risk assessment documents that form the basis for rules on the use of toxic chemicals.

The Mouse that Roared

Congress established the Office of Advocacy in 1976 with the primary goal of establishing a team of experts who could assess how government subsidies, regulations, taxes, and financial market manipulations affect small businesses. To promote small business interests, Congress directed Advocacy to serve as a clearinghouse for small business complaints, criticisms, and suggestions about federal regulations and to represent the small business community in federal regulatory proceedings. The office has a budget of less than $9 million and a small staff working on regulatory issues,[4] yet it wields outsized power over the rulemaking processes at important protector agencies such as OSHA, the Environmental Protection Agency (EPA), and the Consumer Financial Protection Bureau (CFPB).

The Office of Advocacy's power over the federal rulemaking process expanded significantly when President Carter signed the Regulatory Flexibility Act (the "Reg-Flex Act")[5] in 1980. That law required federal regulatory agencies to undertake a thorough analysis of any proposed rule's potential effect on small businesses.[6] If an agency determines that its proposal has the potential to have a "significant economic impact on a substantial number of small businesses," the agency must conduct two rounds of formal "regulatory flexibility" analysis—an initial analysis, and a final analysis that takes into consideration comments from the public and Advocacy. In 1996, Congress amended the Reg-Flex Act to make agency compliance with these analytical requirements judicially reviewable.[7] This amendment makes the analyses part of the record for judicial review, and it authorizes reviewing courts to reject a rule on the sole basis that the agency had failed to adequately carry out one of the analyses in accordance with the law's requirements.

Congress has singled out OSHA, EPA, and CFPB for enhanced supervision by the Office of Advocacy by requiring them to jump through additional hoops whenever their proposed rules might significantly affect a substantial number of small businesses. The Clinton-era Small Business Regulatory Enforcement Fairness Act (SBREFA) requires those agencies to establish a Small Business Advocacy Review Panel (SBAR Panel) for those rules. The SBAR panel consists of representatives from Advocacy, the White House Office of Management and Budget, and the regulatory agency responsible for the rule (OSHA, EPA, or CFPB). The SBAR panel asks a number of individuals from small businesses potentially affected by the rule to provide input on a draft shared by the regulatory agency. The Office of Advocacy is intimately involved in the selection of small business representatives and, as described below, often takes cues on its nominees from big business's advocates. The SBAR panel process occurs well before the agency publicly releases its draft proposal, giving Advocacy and its allies the first crack at critiquing the rule. Since this privileged opportunity comes so early in the decision-making process, the SBAR panel process gives Advocacy and the small business representatives involved enormous influence over what the rule will look like, and indeed whether the rule ever sees the light of day.

In 2002, President Bush further strengthened the Office of Advocacy's power over executive branch agencies. In Executive Order 13272, Bush instructed Advocacy to "train" other agencies on how to comply with the Reg-Flex Act. With the blessing of a White House plainly hostile to federal regulation, the Office of Advocacy developed a guidance document that has the effect of

expanding the Act's reach (thereby giving Advocacy additional power to slow down new rules) and demanding that agencies conduct unreasonable levels of analysis (including analyses of alternative regulatory approaches that go beyond the agency's statutory authority). These changes, combined with Advocacy's power to essentially pass judgment on whether an agency has complied with the Reg-Flex and SBREFA procedures, gives the small office incredible power over regulatory agencies.

In addition to the Reg-Flex and SBREFA powers that the Office of Advocacy wields, it has a number of other tools at its disposal that it can use to derail other agencies' regulatory agendas. Advocacy submits formal comments to agencies during the normal "notice-and-comment" procedures; a recent amendment to Reg-Flex requires agencies to respond to these comments when justifying their final rules, ensuring that Advocacy's comments receive special attention. Sometimes these comments are supported in part by formal research studies conducted by contractors, although the office has a track record of sponsoring biased and flawed research.[8] In addition, Advocacy's comments are supposed to be informed by small business views, although GAO found that Advocacy lacks sufficient documentation to prove that its comments are developed in that way.[9]

Representatives from the Office of Advocacy are regularly called before congressional oversight committees to give their views on other agencies' rules and compliance with Reg-Flex and SBREFA. They rarely fail to use these opportunities to shame agencies whose rules they do not support, and they echo these complaints in statutorily mandated annual reports to Congress.

Officials from Advocacy also frequently participate in White House meetings about proposed rules, where potentially regulated parties present their arguments to the Office of Information and Regulatory Affairs (OIRA)—the "gatekeepers" whose approval must be won before a rule can be formally proposed or finalized. Indeed, during the Bush Administration, the Office of Advocacy and OIRA entered into a Memorandum of Understanding in which the two agencies agree to work closely together on what amounted to blocking, delaying, and diluting agency rules. A 2011 CPR study documents the overwhelming influence that OIRA meetings can have in shaping the substance of final rules.[10] The Office of Advocacy's privileged role in these meetings thus gives it another powerful lever for influencing agency rulemakings.

With this array of procedures and other tools available to it, the Office of Advocacy can be a powerful force standing in the way of a regulatory agency that wants to establish new rules.

ACC, the Office of Advocacy, and OSHA's Silica Rule

OSHA has been working on its new silica standard since 1997, and it has been dealing with ACC and Office of Advocacy opposition since the beginning. Not long after OSHA began working on the rule, ACC established a workgroup to fight OSHA's efforts to better protect workers from the harmful effects of silica exposure. The Crystalline Silica Panel, as it is known, is an association of associations, with key players representing businesses that both produce and use a full range of silica-containing products. The Crystalline Silica Panel comprises eight major corporate interests, at least eight other trade associations, and a single "small" business—an industrial sand mining company with two processing plants and separate corporate office.

Trade associations	*Big businesses*	*'Small' business*
American Foundry Society	ExxonMobil Corporation	Badger Mining Corporation
American Petroleum Institute	Fairmount Minerals Ltd.	
Concrete and Masonry Silica Coalition	Lafarge North America Aggregates and Concrete	
International Diatomite Producers Association	Lehigh Hanson	
National Industrial Sand Association	Specialty Granules Inc.	
National Stone Sand & Gravel Association	Unimin Corporation	
North American Insulation Manufacturers Association	U.S. Silica Company	
The Refractories Institute	Vulcan Materials Company	

In the silica rulemaking, ACC has manipulated Advocacy's role in the rulemaking process, and it has done so in a way that threatens critical worker protections. For instance, the Office of Advocacy helps to select the small business representatives who will provide advice to the SBAR Panel and takes part in the development of the Panel's final report to OSHA. These early-in-the-process decisions can have an enormous impact on the eventual shape and breadth of rules, and can even derail the process altogether. In theory, an SBAR Panel could ask for advice from mostly small business owners, who could report that they would benefit from a strong rule and who would encourage OSHA to forge ahead (e.g., industrial hygiene consultants, control-equipment manufacturers, or occupational health specialists). But in practice, the Advocacy has tended to work with trade associations to identify "small entity representatives" (SERs) who toe an anti-regulatory line and use their advance knowledge of a proposed rule's content to get a leg up on their advocacy in opposition. During the SBAR panel for the silica rule, SERs demanded access to OSHA's background research at the behest of trade associations.[11] The trade associations were then in a position to conduct biased "re-analysis" of information obtained through SBAR Panel participants and use it to lobby Members of Congress.[12] SERs who engage in this behavior skew the SBAR Panel proceedings toward a combative experience for OSHA, also peppering the agency with detailed questions about the economic and technological research

that supports the proposal and demanding that OSHA conduct unnecessarily detailed follow-up analyses.

The SBAR Panel's final report, drafted in part by the Office of Advocacy and reflecting the combative tone of the Panel's proceedings, puts OSHA in a defensive posture and strengthens the position of anti-regulatory advocates in several ways. Standard rulemaking procedures do not include a parallel process for obtaining input from the workers, unions, or other intended beneficiaries of an OSHA rule at that stage in the process, so the SBAR Panel's final report is released into a vacuum in which it becomes the starting point for all subsequent discussion regarding the proposed rule. The report is not released for public comment before being submitted to OSHA, so it may include misleading information. And OSHA responds directly to the report's recommendations, but not until a proposed rule is published in the *Federal Register*. Sometimes that can take years—just under 10 years, in fact, in the case of the silica proposal—all the while leaving the unchallenged SBAR Report "in the wild" to provide ammunition for groups fighting the rule.

After helping draft the SBAR Panel's final report, Advocacy takes on a role akin to that of a lobbying firm, participating directly in the rulemaking process, including the submission of written comments to the agency and testimony in relevant congressional oversight hearings. Unlike traditional lobbying firms, the Office of Advocacy's participation commands special attention from OSHA and other federal agencies, since its actions are backed by explicit congressional and presidential authority and since agencies are legally required to account for the office's views in their final rules, as described above. Regulatory agencies are reluctant to disregard the Office of Advocacy's comments, particularly with regard to the adequacy of the Reg-Flex Act analyses, since the Office of Advocacy's criticism can provide a reviewing court with sufficient grounds for rejecting a rule once it has been challenged in court. Many courts take the Office of Advocacy's comments as powerful evidence that an agency has or has not failed to comply with applicable Reg-Flex Act requirements, though these courts are otherwise not obliged to defer to the Office's interpretations of Reg-Flex's provisions.[13]

Here is what ACC's manipulation of Advocacy looks like in practice, in rough chronological order:

- The Office of Advocacy's official nominees to act as SERs for the silica SBAR Panel included at least eight individuals whose names were submitted by advocates linked to ACC's Crystalline Silica Panel. *One-quarter of the SERs were nominated by advocates linked to ACC.*
- Emails obtained through the Freedom of Information Act show that *trade associations did much of the legwork for the SERs in preparation for the SBAR Panel's two-day conference in November 2003*, including reviewing the draft rule and coordinating with the Office of Advocacy regarding follow-up information requests to OSHA.
- Following the two-day conference, SERs were provided the opportunity to submit formal comments to the SBAR Panel, which would use the comments in drafting its final report. OSHA is required by statute to address the concerns raised in the SBAR Panel's report when finalizing a rule. Emails obtained from the Office of Advocacy through the Freedom of Information Act suggest that *the Crystalline Silica Panel was intimately*

involved in the development of at least three SERs' comments—the two SERs who were nominated by the National Industrial Sand Association (NISA), and one SER who was nominated by the National Stone, Sand, and Gravel Association (NSSGA). Both NISA and NSSGA are key members of ACC's Crystalline Silica Panel. *The SBAR Panel report cites the NISA-drafted comments more than a dozen times and includes extensive quotes from the document. The report also references points made in the NSSGA-drafted comments more than a dozen times.*

- When OSHA sent its revised draft to the White House for final review (the last step before a proposed rule is published in the *Federal Register*), a flurry of activity began, including *eight meetings at OIRA, requested by members of ACC's Crystalline Silica Panel. The Office of Advocacy's OSHA specialist attended six of those eight meetings*. Emails obtained from the Office of Advocacy through the Freedom of Information Act indicate that trade associations considered Advocacy to be a critical ally in their efforts to sway the White House to water down the rule. In urging an Advocacy lawyer to attend one such meeting, one lobbyist said that trade associations "can always use reinforcements."[14]
- As noted above, Advocacy regularly hosts "roundtable" events, which it cites in its formal rulemaking comments as a source of small business views on the rule at issue. *Between the 2003 SBAR panel and the 2014 OSHA hearings on the proposed silica rule, Advocacy hosted numerous roundtables at which the rule was a central point on the agenda*. Documents obtained through the Freedom of Information Act show that *ACC's Crystalline Silica Panel drove those discussions, giving presentations that presaged many of the arguments the Office of Advocacy later submitted to OSHA as concerns raised by the small business community*.
- When the White House finally approved the proposed rule's publication and OSHA opened a formal comment period in September 2013, Advocacy submitted two formal comments, both of which conspicuously align with the ACC Crystalline Silica Panel's advocacy efforts.
    - In October 2013, Advocacy urged OSHA to extend the comment period and expand the hearing that was set to begin a few months later. The Crystalline Silica Panel and its member organizations were also major proponents of delay. In 2013 and the first quarter of 2014, organizations that are part of the Crystalline Silica Panel donated more than $80,000 to the campaign chests of 16 Senators who sent a letter to OSHA demanding delay in the rulemaking process.
    - In February 2014, Advocacy submitted its comments on the substance of OSHA's proposed rule. *Of the 29 specific points raised in Advocacy's comments, roughly one-third have direct connections to points that the Crystalline Silica Panel made in its formal comments.* The connections appear to be more than mere coincidence, given that several of Advocacy's key points, especially on economic issues, echo concerns raised in a draft economic analysis that was sponsored by ACC and shared with Office of Advocacy staff in 2011.[15]

This timeline illustrates that the Office of Advocacy has been highly dependent upon the ACC Crystalline Silica Panel and its members to guide its participation in the silica rulemaking process. As noted above, Advocacy has come under fire from independent auditors at GAO for failing to use standardized procedures to obtain input from small businesses when developing

comments.[16] The timeline above shows that the Office of Advocacy's weak internal controls leave staff susceptible to manipulation by major trade associations. The Office of Advocacy's dependency on ACC in the silica rulemaking raises three major public policy concerns:

- **This approach covers ACC's tracks and undermines the rulemaking process.** A fundamental principle of U.S. administrative law is that the regulatory process must be open and transparent to work effectively. If powerful players in the process use government reports as Trojan Horses to attack rulemaking agencies, then the decisionmakers at the agency—and, later, the judges reviewing the rulemaking record—will not be able to accurately assess the potential biases in the reports. This secrecy also undermines the efforts of other stakeholders to participate meaningfully in the rulemaking process. If these stakeholders are not able to accurately ascertain the real source of information in the Office of Advocacy's rulemaking comments, then they will be hindered in their ability to effectively respond to any arguments raised in those comments.
- **The Office of Advocacy becomes redundant and a waste of taxpayer money.** If the Office of Advocacy adds nothing new to the process—if their comments cover the same ground as well-financed industry groups—then scarce public resources should not be allocated to them. Every year, the Office of Advocacy's nearly $9-million budget goes toward amplifying the voices of big businesses in rulemaking process where they already being heard and heeded.
- **By relying on well-heeled trade associations, the Office of Advocacy perpetuates the problem of small businesses still not having their unique concerns represented.** (This, of course, assumes they have any legitimate unique concerns in the first place.) As OSHA works toward a final rule, its rulemaking staff still have no idea what impact the rule will have on real small businesses. The blame for that must fall squarely on the Office of Advocacy's shoulders.

ACC: A Deeper Look

Three features of ACC's advocacy model make it a powerful player inside the Beltway and a threat to public health: how ACC raises and spends money; the issues that make up ACC's agenda; and ACC's close ties to powerful anti-regulatory forces inside the government.

Dark Money

Since former U.S. Representative Cal Dooley took the helm at ACC in 2008, the trade association has flourished financially and spread its bounty wide. Even while the chemical industry suffered economic contraction as a result of the Great Recession, ACC has brought in new members and increased its revenues and assets. In 2012, the last year for which data are available, ACC brought in over $111 million in reportable revenues and had over $121 million in total reportable assets.

ACC's primary source of revenues is dues assessed to the 182 companies that comprise its membership. Over the period 2004-2012, ACC took in between $75 million and $84 million in membership dues annually.

Some of ACC's basic financial information is public record because it operates under Internal Revenue Service (IRS) nonprofit regulations, but the amount of money that individual companies and trade associations contribute is protected by privacy laws. Nonetheless, occasional tidbits of information leak out from other sources. For instance, although The Dow Chemical Company does not release information about the dues it pays to ACC, the company reports that ACC spent more than $1.3 million of Dow's contributions on reportable federal lobbying expenditures in 2012. That year, ACC reported a total of $9.07 million in federal lobbying expenditures, 14 percent of which was apparently derived from Dow's contributions alone.

ACC contributes directly to politicians and their campaign committees in the small reportable quantities common among major lobbying groups, and evidence suggests that ACC also plays a role in directing its constituent companies where and when to make their political donations. For example, Members of Congress have published two open letters criticizing the silica rule, one from Republican Senators to OSHA chief David Michaels in November 2013 and one from House Republicans to Secretary of Labor Tom Perez in February 2014.

- The signatories on the Senate letter collectively received more than $80,000 in campaign contributions from ACC's political action committee (PAC) and the PACs of individual ACC Crystalline Silica Panel members.
- The signatories on the House letter collectively received more than $230,000 in campaign contributions from those same PACs.

Beyond the political arena, ACC funnels substantial sums of money to researchers whose work adds the patina of neutral legitimacy to the trade association's biased scientific and economic arguments. ACC's IRS filings provide a glimpse into this marketplace. Until 2007, ACC reported certain expenses that were classified as "consulting and research." ACC's expenses for this work hovered around $50 million per year. Individual recipients were not named, but their

work crops up in ACC's advocacy efforts regularly. In the silica rulemaking, for instance, ACC's argument that OSHA failed to make adequate "significant risk" findings relies heavily on the work of Louis Anthony Cox, Jr., Ph.D., President of the Denver-based Cox Associates, and a fixture in the congressional hearings, agency stakeholder meetings, and myriad other forums in which his detailed scientific analysis of agency regulatory efforts invariably weigh in favor of more research and less action by the agency. Cox is Editor-in-Chief of *Risk Analysis: An International Journal*, which is published by the industry-dominated Society for Risk Analysis, and which has long supported research aimed at either weakening safeguards or manufacturing doubt about the hazards those safeguards are intended to address.

Dangerous Agenda

ACC's member companies are responsible for soil and groundwater contamination across the country.

- According to EPA's Toxic Release Inventory, in 2012, ACC member companies reported releasing into the environment a total of roughly 30 million pounds of carcinogens.
- Roughly half of ACC's member companies are found on EPA's Superfund program "List 11," meaning they have been identified as potentially responsible parties (PRPs) for heavily polluted lands in need of complex and expensive cleanup efforts. The PRP designation is significant because it means that a company could be on the hook for millions of dollars in cleanup costs associated with removing decades-old contamination.

With these groups paying ACC's bills, it is no wonder that the trade association's agenda is primarily focused on exonerating chemicals that are widely recognized as being dangerous, much as the tobacco industry sought to do while evidence of the dangers of smoking and second-hand exposure to smoking continued to mount. Silica, though perhaps not as well-known as formaldehyde, BPA, and the other organic and synthetic chemicals produced by ACC's members, is nonetheless an important industrial mineral and a major occupational hazard.

As part of its overarching agenda to forestall government regulation, ACC has worked hard in opposition to OSHA's silica standard, as detailed above. This rulemaking is also of special concern because the standard proposes limiting worker exposure to silica by requiring ACC's member companies to invest in new safety equipment and provide other services to workers to improve their health and safety. ACC's Crystalline Silica Panel has attacked the rule by focusing mostly on the costs associated with these changes, without acknowledging or accounting for the important benefits that will accrue to workers.

Multi-front Battles and Government Accomplices

Like other successful advocates, ACC pushes its agenda in Congress, in the courts, in regulatory agencies, and in the media. It is certainly within its rights to do so. But ACC has an additional tool that is not available to all other advocates: close coordination with the SBA's Office of Advocacy. ACC's connection to the Office of Advocacy is particularly insidious because of the outsized role that Advocacy can play in the rulemaking process. As described above, Congress has passed several laws that require regulatory agencies such as EPA and OSHA to go through additional analytical steps to formally address concerns raised by small businesses and the Office of Advocacy. When those procedures are manipulated by big businesses and their trade

associations, the result inevitably undercuts the principal missions of the agencies—in the case of OSHA, working to protect public health.

Conclusion and Recommendations

ACC is using the Office of Advocacy as a pawn in its broad effort to prevent public health agencies from achieving their missions. The ACC's ongoing control of the Office of Advocacy's interventions in agency rulemakings—such as OSHA's silica rule—serves to waste taxpayer dollars, neglect the interests of actual small businesses, and undermine critical safeguards for workers and the public. To prevent this from happening, several things could be done:

- ***The Office of Advocacy should take steps to document that its comments on rules are informed by the views of real small businesses and account for the unique interests of those businesses that would be impacted by the rule.*** When an agency rule does not implicate the legitimate and unique interests of small businesses, the Office of Advocacy should refrain from participating in the rulemaking.
- ***The President should revoke Executive Order 13272.*** The Executive Order set the stage for the Office of Advocacy to expand its reach into a broader class of agency regulatory efforts. As a result, trade associations can manipulate the Reg-Flex and SBREFA processes in more rules and thwart even more actions than would have been possible before the Executive Order. To cut bureaucratic red tape that threatens public health, Executive Order 13272 should be revoked.
- ***Agencies should be empowered to marginalize the Office of Advocacy's comments when they are not based on statistically valid sampling of small businesses.*** Regulatory agencies are held to a high standard when they develop regulations, and they face severe criticism if their evidence is not based on sound data-gathering and analysis. The Office of Advocacy should hold its own work to similar standards, and the agencies should hold Advocacy to them as well—only altering proposed regulations to account for small business concerns where those concerns are well documented, independently verified as necessary, and related to significant impacts that actually threaten the ability of small firms to compete against larger ones.
- ***Congress should commit to conducting routine and thorough oversight of the Office of Advocacy.*** Additional oversight will ensure that the Office of Advocacy does not continue to stray from its mission, wasting taxpayer dollars and undermining the implementation of important public health laws. The relevant committees in Congress can begin this task by looking specifically into the Office of Advocacy's interference in OSHA's silica rulemaking on behalf of the ACC. Congress should also consider requesting follow-up GAO audits of the Office of Advocacy's activities, with a particular focus on its policies and procedures for obtaining the views and concerns of a wide array of small businesses.

These reforms will go a long way toward halting and potentially reversing the dangerous "mission creep" that has led the Office of Advocacy to maintain a reactionary, anti-regulation viewpoint that mirrors the simplistic rhetoric of the big-business trade associations. These are achievable goals in the short term and they could have a significant effect on the operations of the federal agencies that are often stymied in their efforts to protect public health by an Office of Advocacy that is being unduly manipulated by big business advocates.

Endnotes

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[11] Email from Bob Glenn, National Industrial Sand Association, to Lee Cole, C.E.D. Enterprises, Inc., Nov. 19, 2003, *on file with authors (obtained through Center for Effective Government Freedom of Information Act request)*.
[12] Letter from the John Smith, Jr., Mason Contractors Association of America, to The Honorable Jim Talent, United States Senate, Nov. 18, 2003, *on file with authors (obtained through CEG Freedom of Information Act request)*.
[13] Am. Trucking Ass'ns v. EPA, 175 F.3d 1027, 1044 (D.C. Cir. 1997), *modified in other respect*, 195 F.3d 4 (D.C. Cir. 1999), *reversed in other respect*, Whitman v. Am. Trucking Ass'ns, 531 U.S. 457 (2001). In one case, a federal district court rejected a National Marine Fisheries Service (NMFS) rule setting commercial fishing quotas for Atlantic shark species after finding that the agency had failed to comply with various Reg-Flex procedures. Southern Offshore Fishing Ass'n v. Daley, 995 F. Supp. 1411, 1436 (M.D. Fla. 1998). The court's analysis in support of this finding relied heavily on the comments that the Office submitted during the rulemaking process. *See id*. at 1435.
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About the Center for Progressive Reform

Founded in 2002, the Center for Progressive Reform is a 501(c)(3) nonprofit research and educational organization comprising a network of scholars across the nation dedicated to protecting health, safety, and the environment through analysis and commentary. CPR believes sensible safeguards in these areas serve important shared values, including doing the best we can to prevent harm to people and the environment, distributing environmental harms and benefits fairly, and protecting the earth for future generations. CPR rejects the view that the economic efficiency of private markets should be the only value used to guide government action. Rather, CPR supports thoughtful government action and reform to advance the well-being of human life and the environment. Additionally, CPR believes people play a crucial role in ensuring both private and public sector decisions that result in improved protection of consumers, public health and safety, and the environment. Accordingly, CPR supports ready public access to the courts, enhanced public participation, and improved public access to information.

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