June 19, 2012

The Honorable Cass Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

RE: Draft 2012 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities

Dear Administrator Sunstein:

OMB Watch welcomes the opportunity to comment on the Draft 2012 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local and Tribal Entities regarding whether agencies should be required to conduct additional analysis on the impacts of regulatory actions on employment. OMB Watch is a nonprofit, nonpartisan research and advocacy organization promoting an open, accountable government responsive to the public's needs. Since its inception in 1983, OMB Watch has carefully monitored regulatory policy and advocated for strong health, safety, and environmental protections on behalf of the public.

OMB Watch believes that there is already adequate analysis – maybe too much analysis – of the economic impact of regulations, including the effects, if any, that regulations may have on employment. As the research cited in the 2012 Draft Report shows, regulations can increase productivity[1], spur technical innovation[2], and encourage firms to participate in certain markets[3] – and they provide disproportionate benefits to poorer, less educated people.[4]

Protecting the American public must remain agencies' preeminent concern.

Too often, economic analysis of health, safety, and environmental safeguards ignore the very real benefits they provide to the economy. For example, scientific studies demonstrate that the Clean Air Act regulations have prevented 130,000 heart attacks and 54,000 cases of

[1] Eli Berman and Linda T.M. Bui, "Environmental Regulation and Labor Demand: Evidence from the South Coast Air Basin," Journal of Public Economics 79: 265, 2001.

[2] Adam Jaffe and Karen Plumer, "Environmental Regulation and Innovation: A Panel Data Study," *Review of Economics and Statistics* 1997, 610-9.

[3] David Moss and John Cisternino, eds., *New Perspectives on Regulation*, 2009. Cambridge, U.K.: The Tobin Project.

[4] Matthew E. Kahn, "The Beneficiaries of Clean Air Act Regulation." *Regulation magazine*, 2001 24(1).

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bronchitis, averted 86,000 hospitalizations, and save more than 160,000 lives every year.[5] In addition, American workers are on the job 13 million more days each year than they would have been if the Clean Air Act Amendments had not been passed by the Congress and signed by the President. These are not the type of employment effects usually incorporated into economic analysis of regulations.

Analysis of Employment Effects is Unnecessary.

Research indicates that regulations can increase employment, albeit modestly. This is true largely for two reasons: first, regulations can directly or indirectly spur investment, innovation, and hiring. They often create new opportunities, and sometimes even entire new industries. Second, regulations support the overall sustainable functioning of our economy. Since regulations overall have a positive effect on employment, further analysis of the employment impacts of regulation on a hazard-by-hazard basis is unnecessary.

The Economic Policy Institute has concluded, "[t]aken as a whole . . . the literature studying individual regulations and specific industries tends to show that the broad fear of substantial regulation-induced job loss at the industry level is unfounded."[6] A study of the employment impact of environmental regulations in four heavily-polluting sectors (sectors in which the costs of environmental regulations would have been highest) found that such rules had a small but positive effect in the petroleum and plastics sectors, and no statistically significant effect in the steel and pulp and paper sectors.[7]

Among the reasons regulations may create jobs is because they induce firms to hire additional abatement or compliance workers. Additionally, they often spur development of innovative technologies or processes. In fact, a Harvard Business School economist has argued that such gains can entirely offset the cost of compliance.[8] This is particularly likely to be true when – as is currently the case – corporations are holding significant capital reserves and unemployment is high.

While individual corporations may be reluctant to invest in environmental technologies on their own initiative, sector-wide upgrades of the type generated by regulations are likely to drive capital investment, technological innovation, economic activity in existing markets, the establishment of new markets, and, ultimately, broad-based hiring increases. The Economic Policy Institute has found that enactment of a single rule now under consideration – the proposed

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[5] U.S. Environmental Protection Agency, Office of Air and Radiation, "The Benefits and Costs of the Clean Air Act: 1990 to 2020," Final Report, Washington, D.C., EPA, March 2011, pp. 7-9.

[6] Isaac Shapiro and John Irons, "Regulation, Employment, and the Economy: Fears of job loss are overblown," Economic Policy Institute Briefing Paper, April 2011. Retrieved 5 June 2012, from http://www.epi.org/publication/regulation_employment_and_the_economy_fears_of_job_loss_are_overblown/.

[7] Richard D. Morgenstern, William A. Pizer, and Jhih-Shayang Shih, "Jobs Versus the Environment: An Industry-Level Perspective," *Journal of Environmental Economics and Management* 43: 412-436, 2002.

[8] Michael Porter and C. Van der Linde, "Toward a New Conception of the Environment-Competitiveness Relationship," *Journal of Economic Perspectives* 9(4): 97-118, 1995.

national emissions standards for mercury, arsenic, and other toxic air pollution from power plants – would create a net increase of more than 90,000 jobs in sectors as diverse as mining; construction; utilities; agriculture, forestry, fishing, and hunting; finance and insurance; educational services; health care and social assistance; and arts, entertainment, and recreation.[9]

Experience during the implementation of existing regulations demonstrates that the "air toxics rule" is not a unique example. OSHA exposure standards usually require that improved ventilation or other engineering controls be installed. Capital expenditures on these regulatory duties provide jobs for sheet metal workers, HVAC designers, and other employees of mechanical contractors. Compliance with Mine Safety and Health Administration regulation of exposure to diesel particulate matter required that mines switch to biodiesel fuels and/or purchase new diesel engines. These regulatory requirements had the effect of increasing demand for biofuels and expanding the opportunities for employment among diesel engine manufacturers.[10]

Regulations also benefit employment indirectly, by supporting the function of the economy as a whole. For example, as noted above, the Clean Air Act Amendments of 1990 keep workers healthier and, as a result, keep them on the job. Had the financial industry been adequately regulated in 2008, the economic crisis might have been averted and 8 million jobs might never have been lost. Even the most conservative calculations show that the quantifiable benefits of regulations are more than double the quantifiable costs. (This leaves out entirely, of course, any consideration of qualitative costs and benefits.) It is simply illogical to suggest that a policy that is good for the American economy is anything but good for American employment.

Corporations should not be allowed to stall regulations by threatening bad "employment effects."

The 2012 Draft Report recognizes that regulatory impacts on economic growth may be difficult to demonstrate because of other simultaneous changes in the economycan have indirect and secondary effects which lead to job creation. It would unduly burden the regulatory process to require agencies to complete yet another economic analysis that relies on incomplete data. Agencies are already required to evaluate the economic impact of rules. Attempts to "quantify the adverse employment effects (if any) of regulations and turn those effects into monetary equivalent," as discussed in the 2012 Draft Report, are likely to be based on limited data and miss important aspects of the employment picture. This is particularly likely to be true if the analyses are based on surveys of the affected industry. The employment effects of a regulation are nearly impossible to isolate, as employment trends are influenced by a range of other economic factors (including changes in demand, which small business owners currently cite as the biggest challenge they face[11]). The analysis is particularly likely to undercount newly-created jobs, as they are most likely to be driven by technological improvements, innovation, and

[9] Shapiro and Irons, *op. cit.*, p. 16.

[10] National Biodiesel Board, "Market Segments: Mining," 2012. Retrieved 13 June 2012 from http://www.biodiesel.org/using-biodiesel/market-segments/mining.

[11] The American Sustainable Business Council, Main Street Alliance, and Small Business Majority, *op. cit.*

the opening of new markets. Economists have found that plant managers are likely to overestimate the effect on their operations of complying with a new regulation. [12]

Not only is the data inadequate to assess the economic impact of regulations, but any such analysis is likely to be skewed by focusing on short-term job losses among the regulated industry and ignoring long-term job gains among industries that manufacture compliant equipment or that provide services to assist in regulatory compliance. Studies consistently show that *ex ante* analysis of the economic impacts of regulations often fail to anticipate innovation spurred by regulation. This problem is likely to plague any analysis of employment effects, which will not adequately capture job gains in new markets created by regulation.

Too often, those complaining about the employment effects of regulation are the same voices who try to block the regulations. Roger Noll, co-director of the Program on Regulatory Policy at the Stanford Institute for Economic Policy Research, has described the situation this way:

> The effect of regulation on jobs has nothing to do with the mess we're in. The current rhetoric about regulation killing jobs is nothing more than not letting a good crisis go to waste.[13]

Providing for special consideration of the employment effects of regulation when there is no evidence of an adverse effect of regulations on jobs is bad policy. We urge you to allow agencies to remain focused on their core missions – that is, to keep the American public safe from unreasonable risks – rather than divert their limited resources to yet another speculative economic calculation that would do nothing to improve the quality of regulations produced.

Sincerely,

Randy S. Rabinowitz

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Director of Regulatory Policy

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[12] Berman and Bui, *op. cit*.

[13] Roger Noll, *quoted in* Marian Wang, "Do Regulations Really Kill Jobs Overall? Not So Much," ProPublica, 21 Sept. 2011. Retrieved 8 June 2012, from www.propublica.org/.../whats-the-evidence-that-regulations-kill-jobs.