

“How the Administration’s Regulatory Onslaught is Affecting Workers and  
Job Creators”

United States House of Representatives  
Committee on Education and the Workforce  
Subcommittee on Workforce Protections

Sam Batkins, Director of Regulatory Policy\*  
American Action Forum

December 9, 2015

\*The views expressed here are my own and not those of the American Action Forum.

Chairman Walberg, Ranking Member Wilson, and Members of the Committee, thank you for the opportunity to appear today. In this testimony, I wish to highlight the following points:

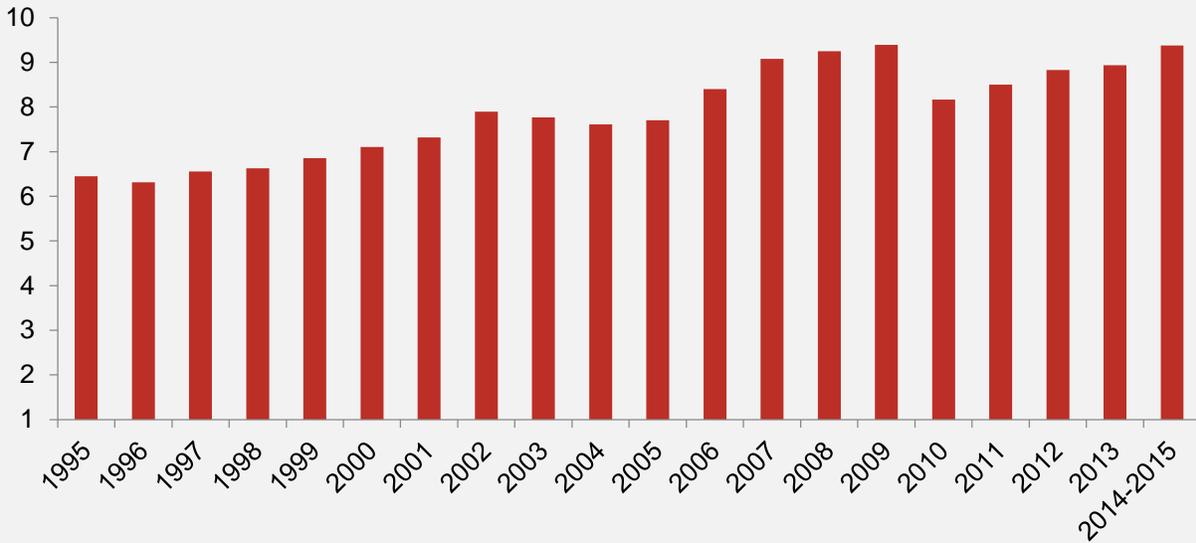
- By virtually any metric, regulatory activity has increased during the past few years. For example, in 2010 the federal government set a modern record by issuing 100 major rules. Over time, as agencies issue an average of 75 major rules annually, regulations will have an impact on employment: either gains, losses, or transfers. Since 2008, regulators have added more than \$100 billion in annual regulatory costs. These regulatory costs affect employment, consumers, and the broader economy.
- The general consensus suggests that regulation can have a statistically significant and directionally negative effect on employment. For example, Richard Morgenstern, a leading regulatory economist has stated, “There is only limited evidence that environmental regulation leads to significant job loss.” Conclusions about other employment areas are mixed and more research is needed.
- The American Action Forum’s (AAF) own work has found statistically significant, but small effects from regulation on employment. In one study examining the effect of 148 regulations on 44 industries over time, AAF found that for every \$1 billion in new regulatory costs, industry employment declined by 3.6 percent.
- In addition to what outside research suggests, even federal agencies routinely acknowledge new rules can have negative impacts on employment. Based on an AAF review of rules since 2012, 22 regulations have conceded they could negatively affect employment, including eleven from this year.

## **Regulatory Overview**

Even though there might not be a general consensus that regulatory activity has increased recently, a variety of metrics from both non-profit and government sources reveal that activity (measured by paperwork, major rules, overall regulatory costs, and regulatory restrictions) has increased substantially.

The first chart below tracks the cabinet-level paperwork burden from 1995 to 2015, years for which the federal government has [available data](#). As shown below, paperwork at the cabinet level has accelerated from 6.4 billion hours in 1995 to roughly nine billion hours today, an increase of approximately 40 percent.

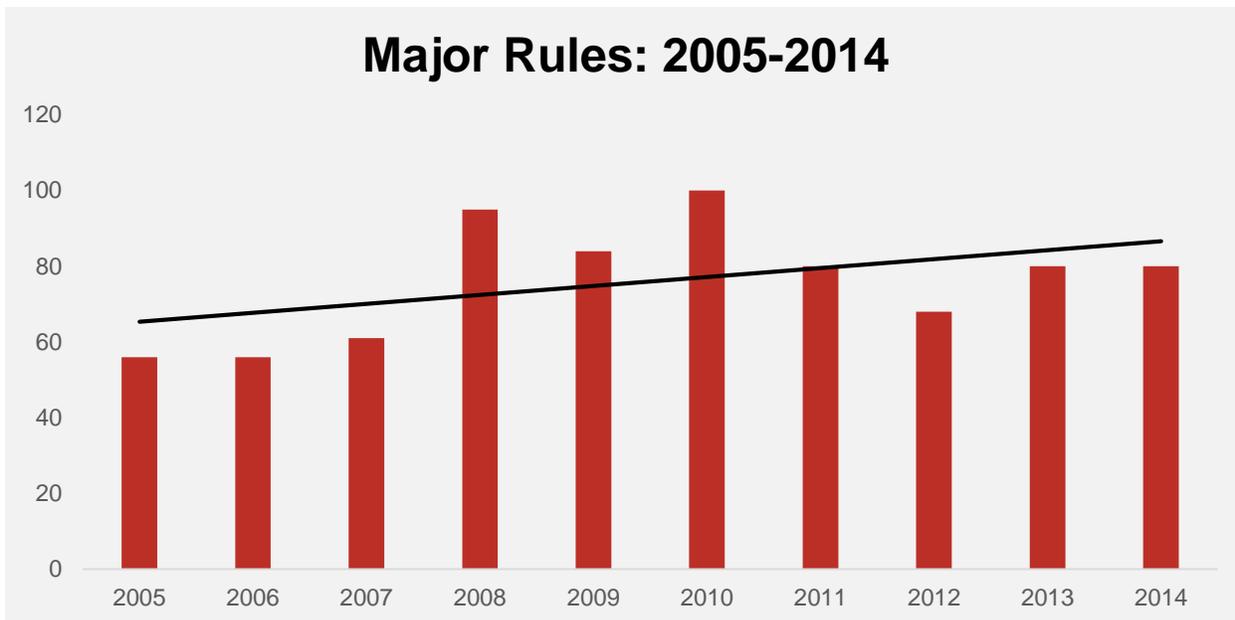
## Cabinet-Level Agency Paperwork Burden (billions of hours)



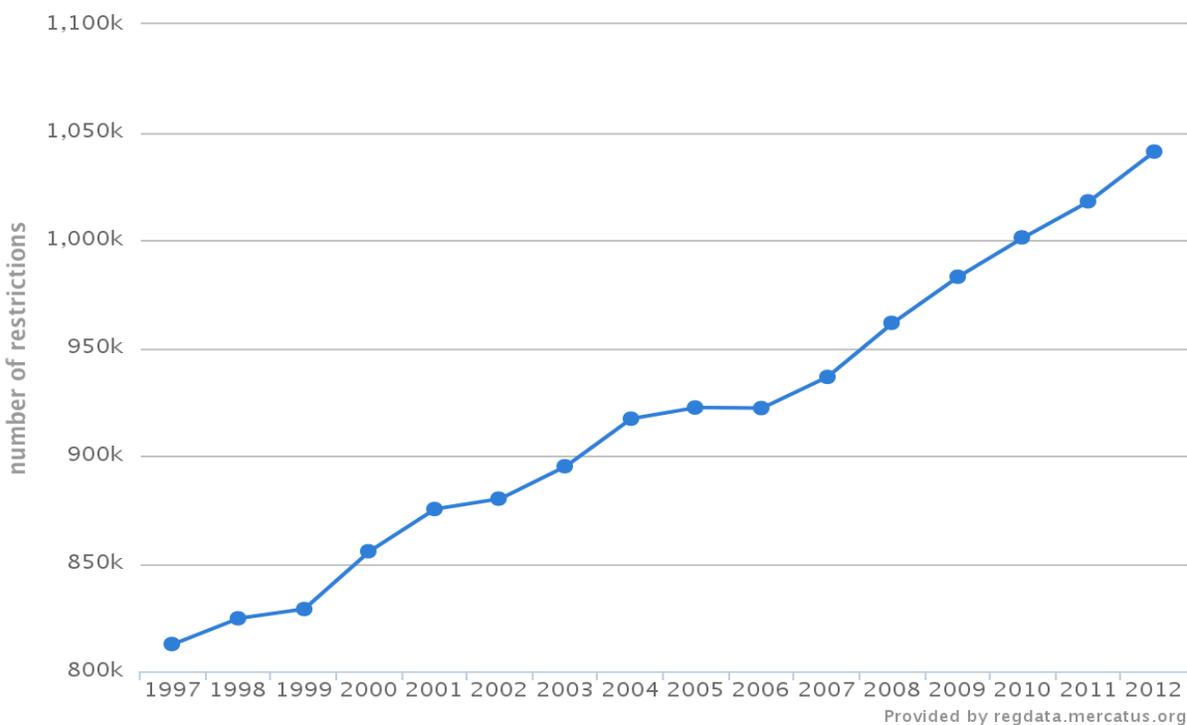
Paperwork is an important metric for measuring regulation because it is the most obvious way for most Americans to encounter the effects of federal rules. Virtually all Americans have completed an I-9 form or complied with the hundreds of tax forms generated by the IRS. This paperwork also has an effect on business. According to the [Bureau of Labor Statistics](#), there are more than 246,000 employees devoted solely to compliance, either regulatory or legal. Annually they are paid approximately \$16.7 billion.

As the regulatory burden grows, so does the demand on businesses to shift employees from profit-making tasks to compliance. A [2013 Minneapolis Fed](#) study emphasized paperwork burdens and what being forced to hire compliance staff means for small banks. The study found that hiring two additional compliance officers reduced profitability by 45 basis points (roughly half-a-percent) and that one-third of the small banks studied would become unprofitable if forced to hire additional compliance officers. Rising paperwork doesn't just exist in the abstract. As regulatory demands increase, so do demands on firms, and ultimately their profitability.

The second chart below tracks the number of “major” regulations during the last ten years. These are rules with an economic impact of \$100 million or more. As the chart shows, there has been a notable increase in the number of “major” regulations. For example, in 2010, the federal government published [100 major regulations](#), a modern record. Those major rules imposed an aggregate cost of [\\$165 billion](#).



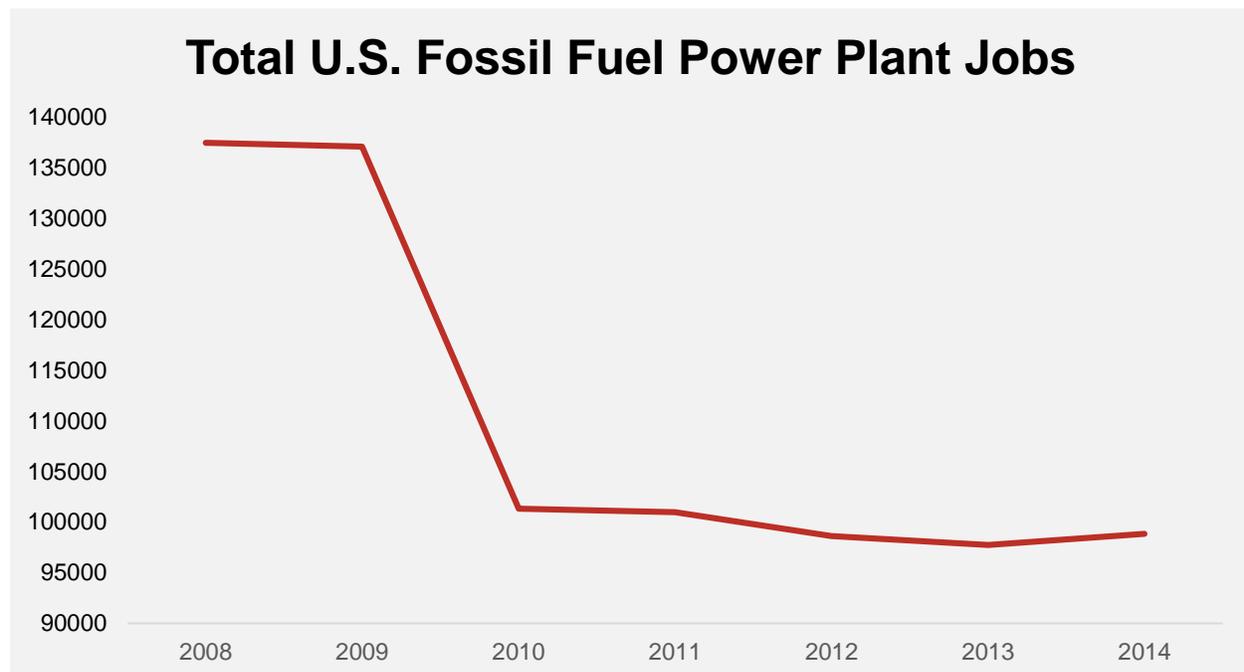
The Mercatus Center has another innovative way to track regulatory growth. By examining the number of “restrictions” (words such as “must” and “shall”) contained in the Code of Federal Regulations, Mercatus can determine how regulation increases or decreases over time. Their [chart below](#) demonstrates the significant increase in regulation from 1997 to 2012.



According to Mercatus, the number of federal regulatory restrictions increased 28 percent from 1997 to 2012. Passage of the Affordable Care Act and Dodd-Frank presages even more growth.

Finally, [AAF has data](#) on every federal regulation that has monetized costs, benefits, or paperwork burden hours from 2006 to present. From 2008 to 2015, regulators have added about \$100 billion in new annual regulatory costs. EPA and the Department of Energy (DOE) are particularly aggressive, adding \$39.7 billion in new annual costs since just 2009, including measures that reduce regulatory burdens.

Few would argue these new rules won't have an effect on employment. Some rules might generate new jobs in the short-run as firms must hire compliance officers or install new equipment to comply with environmental rules. Some regulations might lead to transfers among states, but others might lead to the closure of power plants or mining operations. The [chart below](#) tracks fossil fuel power plant employment from 2008 to 2014.



Despite the slight uptick in 2014, employment has nevertheless declined by 27.8 percent and it remains at its lowest level since at least 2001. There are other factors at work, namely the rise in renewable energy and the Great Recession, but even EPA Administrator Gina McCarthy [has conceded](#) that regulations are a factor in declining industry employment. The intersection between regulation and employment is far more complicated than “increase” or “decrease,” but the preponderance of academic evidence indicates that regulation can negatively affect economic growth and employment.

### Literature on Regulation and Employment

As with any public policy debate, there are studies on both sides that support or oppose a position. Indeed, there are studies showing that regulation can increase employment in certain industries, decrease employment, or lead to statistically insignificant results. The macroeconomic effect of regulation is more difficult to discern. For example, even a \$10 billion regulation will likely have insignificant effects on nationwide employment and output.

Recent work, however, by Professors John Dawson and John Seater suggests the aggregate impact of regulation over time is profound.<sup>1</sup> In their analysis of regulation from 1949 to 2005, they find regulation has reduced annual output by roughly 28 percent. To put that in context, they write, “In 2011, nominal GDP was \$15.1 trillion. Had regulation remained at its 1949 level, current GDP would have been about \$53.9 trillion, an increase of \$38.8 trillion.”<sup>2</sup> Few would argue that the 1949 level of regulation is appropriate today, and indeed, the authors share that sentiment. They note, “Consequently, we emphasize that our results offer no conclusion on whether regulation is a net social benefit.”

If the results of Dawson and Seater seem implausible, consider a 2005 World Bank study that found that as a country’s index of regulation increases by one standard deviation (roughly 34 percent), its annual GDP per capita declines by 0.4 percent.<sup>3</sup> Dawson and Seater write, “By comparison, our time-series of the US indicates that an increase in total regulation of 600% reduces growth by just 2 percentage points.”<sup>4</sup> Yet, those two percentage points have significant consequences for growth and employment.

In a recent compendium (“Does Regulation Kill Jobs”), editors Cary Coglianese, Adam Finkel, and Christopher Carrigan find the real picture of regulation and employment decidedly mixed, with a call for more research on the topic. On one hand, the authors lament claims that all regulations kill jobs. On the other, there are claims from former EPA Administrator Carol Browner, “[T]he EPA creates opportunities and creates jobs.” However, if it were that easy, one way to increase labor force participation would be through increased EPA regulation. Yet, few argue that regulations should be the sole vehicle for boosting employment.

Someone must bear the costs of regulation. Generally, everyone enjoys the benefits of federal rules, but someone must pay: either owners of a firm, employees of the firm, or consumers in the form of higher prices. Sometimes, all parties bear the costs of increased regulation. In a seminal study, Professor Michael Greenstone examined how employment in “pollution intensive industries” in non-attainment ozone counties differed from attainment counties. The results were dramatic: non-attainment counties, those with stringent EPA controls, lost 590,000 jobs, \$37 billion in capital, and \$75 billion in output.

However, as Richard Morgenstern’s review of this study reveals, the jobs total may be shocking, but the study’s results did not preclude the possibility that these jobs could have simply been transferred from non-attainment counties to attainment counties. Based on Morgenstern’s review, he finds, “There is only limited evidence that environmental regulation leads to significant job loss.” He did not say that there is evidence environmental regulation leads to major job gains.

Beyond these topline figures, recent research has highlighted the human component to regulation and employment. Even if a regulation results in a net of zero jobs gained or lost, but it still

---

<sup>1</sup> Journal of Economic Growth, “Federal Regulation and Aggregate Economic Growth,” available at <http://bit.ly/1O65AqA>.

<sup>2</sup> Id.

<sup>3</sup> World Bank, “The Impact of Regulation on Growth and Informality,” available at <http://bit.ly/1QUsXcL>.

<sup>4</sup> Id.

results in transfers where some workers are temporarily unemployed, what is the result? Increased morbidity and mortality for some. Research has found job displacement can lead to a 15 to 20 percent increase in death rates in the 20 years following displacement.<sup>5</sup>

The University of Chicago's Jonathan Masur and Eric Posner examined the human element more closely. They attempted to monetize the cost of one displaced worker. Using an estimate of \$100,000 per worker, they then determined whether regulatory agencies monetized the impact of lost employment.<sup>6</sup> Frequently, even though agencies might quantify the number of lost jobs, they do not monetize the per-employee amount. Masur and Posner next examined an EPA regulation that would generate \$159 million in net benefits, but also result in 5,711 fewer jobs. This job loss wasn't directly a factor in the net benefits calculation, but when Masur and Posner monetized each job lost at \$100,000, net benefits turned to net costs of \$411 million.

Much of the debate over regulation and employment is more than abstract figures. There is a decidedly human component. Even if a regulation has insignificant effects on national employment, the temporary dislocation for some workers should be understood by regulators and policymakers. Few major rules even contemplate or quantify the effect of the rule on employment. In the future, all major rules should at least contain a discussion, and an attempt to quantify, if not monetize, the effect of regulation on employment.

### **Recent Work on Regulation and Employment**

AAF has conducted several studies examining the impact of regulation on industry employment. Some have revealed statistically insignificant results, but others have shown that as regulation increases, affected industry employment declines.

In AAF's largest study, my co-author, Ben Gitis, and I examined the effect of 148 regulations on 44 industries, from 2001 to 2012.<sup>7</sup> Each of these regulations stated it would affect one or more of the affected industries in our sample. We found that for every \$1 billion in new regulatory costs, employment in the affected industry declined 3.6 percent. In our sample, the average industry employed 222,035 workers. If in the following years, the average industry faced \$1 billion in new regulatory costs, it would lose 8,101 jobs.

This might appear striking, but there are only a handful of billion-dollar regulations annually. The Office of Information and Regulatory Affairs (OIRA) reported that there was just one billion-dollar rule issued by cabinet agencies in FY 2014,<sup>8</sup> but during the course of a decade, several multi-million-dollar rules could impose burdens on an industry, reducing employment. The loss of 8,101 jobs in an economy with 142 million employees might seem trivial, but

---

<sup>5</sup> National Bureau of Economic Research, "Mortality, Mass-Layoffs, and Career Outcomes," available at <http://www.nber.org/papers/w13626>.

<sup>6</sup> University of Chicago Working Paper No. 571, "Regulation, Unemployment, and Cost-Benefit Analysis," available at <http://bit.ly/1OJKAZz>.

<sup>7</sup> American Action Forum, "The Cumulative Impact of Regulatory Cost Burdens on Employment," available at <http://bit.ly/1mH105M>.

<sup>8</sup> Office of Information and Regulatory Affairs, "2015 Draft Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities," available at <http://1.usa.gov/1lct4n7>.

consider the human element behind each lost job.<sup>9</sup> At \$100,000 per worker, the cost to a single industry could be \$810 million.

Beyond, the emotional toll of employment disruptions, there are also distributional impacts. There is strong evidence that regulation affects start-ups and small businesses disproportionately. Here, two recent studies provide some perspective. In “Regulatory Impact on Small Business Establishments,” Ben Gitis and I found that a 10 percent increase in cumulative regulatory costs reduces the number of businesses with fewer than 20 workers by five to six percent.<sup>10</sup> Meanwhile, large businesses can actually prosper from some types of regulation. Our study found a two to three percent increase in firms with more than 500 workers after an increase in regulation.

Another study by James Bailey and Diana Thomas for the Mercatus Center found similar results.<sup>11</sup> Using RegData, they analyzed the impact of rising regulatory burdens on small firm creation. Their results suggest a ten percent increase in regulation results in a 0.5 percent decrease in “overall firm births.”<sup>12</sup> They also noted that the effects of regulation were more acute for small firms and some large businesses might actually prosper from new rules. Bailey and Thomas write, “In fact, there is some evidence that deaths among large firms actually decrease: a 10 percent increase in regulation is associated with a 0.9 decrease in the deaths of large firms.”<sup>13</sup>

In sum, the recent work on regulation and employment has shown small, but statistically significant results for industry employment. Undoubtedly, some industries are more regulated than others, and generally, increased compliance costs can stifle small business growth.

## **Regulatory Impact Analyses and Employment**

Typically, agencies omit or fail to quantify the impact of major regulation on employment. For example, Rutgers University Professor Stuart Shapiro examined the Regulatory Impact Analyses (RIA) of 56 major rules and found that just 11 quantified the impact of the rule on employment.<sup>14</sup> Professor Shapiro recommends a new federal office to study the effects of rules. Ideally, this office could study regulations both prospectively and retrospectively.

For the RIAs that do at least discuss the intersection of regulation and employment, many do concede some employment declines. AAF studied the RIAs of rules from 2012 to present and found 22 that either mentioned or quantified a loss of employment. In 2015, so far 11 rules from four different agencies have acknowledged a negative impact on employment. The combined employment loss from the 22 rules, according to agency estimates, could reach 85,981 workers.

---

<sup>9</sup> Bureau of Labor Statistics, “Employees on Nonfarm Payrolls,” available at <http://1.usa.gov/1NJXmtX>.

<sup>10</sup> American Action Forum, “Regulatory Impact on Small Business Establishments,” available at <http://bit.ly/1zUfXYp>.

<sup>11</sup> Mercatus Center, “The Effect of Regulation on Entrepreneurship and Employment,” available at <http://bit.ly/1Rqhz7B>.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Does Regulation Kill Jobs, “Reforming the Regulatory Process to Consider Employment and Other Macroeconomic Factors,” p. 224.

Proposed overtime expansions, the fiduciary rulemaking, and redefining the joint employer rule will likely add to these significant totals.

For example, in 2013 the Department of Labor issued a rule, “Application of the Fair Labor Standards Act to Domestic Service.”<sup>15</sup> The measure imposed minimal costs, just \$15 million annually, but it did admit to a deadweight loss. That is, “Deadweight loss from a regulation results from a wedge driven between the price consumers pay for a product or service, and the price received by the suppliers of those services.”<sup>16</sup> With the domestic service rule, transfers from employers to employees could reduce the willingness for firms to provide services and the availability of those services. As a result, the DOL rule could “disemploy” approximately 1,000 workers annually during the first ten years of the regulation. Thus, a rule designed to help domestic service employees could notably reduce their employment as well.

The most active regulators, EPA and DOE, are also the most willing to admit their rules could cause employment disruptions. From the list of 22 regulations, DOE and EPA issued 15 admitting employment could decline. DOE might operate under-the-radar, at least compared to EPA, but its regulations will have a profound impact on employment. In one recent air conditioning rulemaking, the [administration wrote](#), “It is possible the small manufacturers will choose to leave the industry or choose to be purchased by or merged with larger market players.”<sup>17</sup> Finally, in an efficiency standards rule for hearth products, DOE predicted industry employment could drop by 51 to 908 employees. This might seem insignificant, but consider that overall employment in the hearth industry is projected to be 1,565 employees by 2021.<sup>18</sup>

With just 22 regulations admitting some decline in employment, there are certainly other rules with employment impacts that regulators never analyze. For example, not one independent agency has forecasted a decline in employment from a rule in recent years, despite dozens of major Dodd-Frank rulemakings. Expanding the use of employment analyses, and RIAs at independent agencies, will at least aid in our understanding of regulation and employment.

## **Conclusion**

The general consensus is regulation does have an effect on employment, at least at the industry level. Generally, statistically significant results show small impacts on employment, but these figures can hide a real human component behind the cost of losing one’s job. More research is needed in this field and agencies, OIRA, and independent parties should work to perform more rigorous analysis on the intersection of regulation and employment.

Thank you. I look forward to answering your questions.

---

<sup>15</sup> 78 Fed. Reg. 60,453, available at <https://federalregister.gov/a/2013-22799>.

<sup>16</sup> 78 Fed. Reg. 60,537, available at <http://www.federalregister.gov/a/2013-22799/p-783>.

<sup>17</sup> American Action Forum, “The Department of Energy: Under-the-Radar, Overly Burdensome,” available at <http://bit.ly/1hQOIL9>.

<sup>18</sup> *Id.*