



Institute for Policy Integrity

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VIA ELECTRONIC SUBMISSION

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Office of Policy and Strategic Planning
U.S. Department of Commerce

Attention: Docket No. DOC-2017-0001

Subject: Response to RFI on “Impact of Federal Regulations on Domestic Manufacturing”

The Institute for Policy Integrity at New York University School of Law¹ submits the following comments to the Department of Commerce in response to its request for information on the impact of federal regulations on domestic manufacturing. Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity has expertise on both retrospective review and job impact analysis.

The Department of Commerce’s Request for Information is, in part, a request for comments on ideas for a retrospective review on permitting and regulatory requirements, with a unidirectional focus on repealing existing “burdensome” requirements. The agency also generally seeks information about the potential adverse impacts of regulations on manufacturing. Policy Integrity offers these two main comments:

- First, retrospective review should prioritize reanalysis of regulations for which actual costs and benefits diverge significantly from predicted costs and benefits, because of changing economic circumstances, new technological innovations, emerging scientific understandings, or initial miscalculations. **Prioritizing retrospective review based purely on the volume of opposition from regulated entities—without consideration of regulatory benefits—is an irrational and inefficient approach.**
- Second, to the extent that other stakeholders submit information to the Department of Commerce on alleged impacts to employment from regulation, Policy Integrity provides a different view grounded in basic economic theory and evidence: **Regulations have little effect on aggregate employment or unemployment rates.**

On retrospective review, the Department of Commerce asks stakeholders to “list the top four regulations you believe are most burdensome for your manufacturing business.” The implication is that the regulations most frequently identified by manufacturers as “burdensome” will be prioritized for retrospective review and repeal. First, it is important to remember that retrospective

¹ These comments do not necessarily represent the views of NYU, if any.

review is an opportunity to recalibrate regulations over time to improve efficiency and effectiveness, in light of new information. Retrospective review should never focus solely on deregulation. Sometimes a rule will have become obsolete or outdated over time, but sometimes new information on costs and benefits will indicate that a more stringent regulation would better maximize social welfare. As OIRA has explained, “[Retrospective] review should also consider strengthening, complementing, or modernizing rules where necessary or appropriate—including, if relevant, undertaking new rulemaking.”²

Second, it is important to remember that there are numerous existing procedures to guide agencies’ retrospective review, including Section 6 of Executive Order 13,563 and Section 610 of the Regulatory Flexibility Act. Any retrospective review conducted under the January 24, 2017 presidential memorandum should be consistent with the still operational guidelines of Executive Order 13,563, which requires agencies to “consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, *insufficient*, or excessively burdensome, and to modify, streamline, *expand*, or repeal them in accordance with what has been learned.”

Third, the January 24th presidential memorandum leaves to agency discretion how to prioritize the retrospective review of permitting and regulatory requirements that affect domestic manufacturing. The Department of Commerce seems to propose prioritizing its review based solely or primarily on the volume of complaints received from regulated entities. Such an approach is inappropriate, as it completely ignores the magnitude of the social benefits generated by such regulations and permitting requirements. Instead, retrospective review should prioritize reanalysis of regulations for which actual costs and benefits diverge significantly from predicted costs and benefits, because of changing economic circumstances, new technological innovations, emerging scientific understandings, or initial miscalculations. Public comments, including from manufacturers, certainly should play a role in informing regulatory review, but agencies should prioritize rules for reconsideration based on evidence of changed costs or benefits, the significance of the rule, the age of the rule, and other factors as well. Public comments are most useful to the extent they offer evidence of circumstances that have changed since the rules were originally promulgated. As OIRA recommends, “Candidates for reconsideration include rules that new technologies or unanticipated circumstances have overtaken.”³ Agencies should also be careful not to review existing rules so early as to reduce the ability or incentive for industry to adapt; older rules are better candidates for review because technological or other substantive changes are more likely to have occurred since their promulgation.

Finally, when the Department of Commerce and other agencies identify rules that are ripe for retrospective review based on changed costs and benefits over time, the retrospective review should include a thorough and balanced review of a rule’s actual impacts, including both costs and benefits and distributional consequences.

On job and employment impacts, Policy Integrity submits the attached factsheet, which details the following findings: (1) Regulations have little effect on aggregate employment or unemployment rates. (2) While regulatory or deregulatory action may temporarily create labor demand or lead to temporary layoffs, such actions do not typically affect long-term job growth. (3) Job analysis models can easily be manipulated to predict either job losses or gains, and therefore should not be relied upon to prioritize regulatory targets for retrospective review. (4) Blocking or repealing regulations solely based on job effects without consideration of broader benefits and costs is bad economics, bad policy, and bad law. (5) Regulations are poor tools for addressing the negative impacts from jobs shifting from one sector to another.

² OIRA Memorandum M-11-10, Feb. 2, 2011, at 4-5.

³ *Id.*

Respectfully submitted,

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