

Center for Regulatory Effectiveness

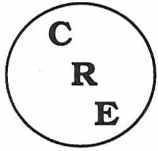
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December 24, 2010

Congressman Darrell E. Issa
Ranking Member
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Dear Congressman Issa:

The Center for Regulatory Effectiveness (CRE) appreciates the opportunity to assist the Committee on Oversight and Government Reform in identifying regulatory programs that have negatively impacted job growth. We are limiting our response to those rules for which we have a detailed working knowledge of their shortcomings. We are in a position to provide additional details if you wish.

A. CMS Competitive Bidding Program

The Centers for Medicare and Medicaid Services' (CMS) competitive bidding program for durable medical equipment (DME) is a regulation that will be directly responsible for destroying thousands of small businesses and the associated jobs. CMS admittedly "expect[s] that this final rule will have a significant impact on a substantial number of small suppliers." Results from the Round 1 Rebid confirm that most existing home medical equipment suppliers will lose all Medicare business in the affected areas.¹

It is important to recognize that many of the job losses are not inherent in competitive bidding itself, but rather in the way in which CMS implemented the program. Importantly, CMS received a letter, signed by over 160 economists including two Nobel laureates, detailing specific problems with the way CMS conducted the bidding program.² The inefficiencies and lack of transparency in the bidding process ultimately displace existing home medical equipment suppliers and thousands of associated jobs. Notably, CRE has received hundreds of calls from Medicare recipients across the country who are scared and angry that they will lose trusted home medical equipment providers because of CMS' bidding program. You can hear the voices of Medicare recipients opining on CMS' program on our competitive bidding discussion forum, <http://www.thecre.com/Forum/>.

¹ <http://www.thecre.com/blog/wp-content/uploads/2010/11/cramton-change-in-market-structure.pdf>

² <http://www.thecre.com/blog/wp-content/uploads/2010/09/stark-letter.pdf>

B. NOAA/NMFS Gulf of Mexico Take Rules

In 2004, Minerals Management Service³ petitioned NOAA's National Marine Fisheries Service (NMFS) to promulgate rules under the Marine Mammal Protection Act for the oil and gas industry's use of seismic air guns to explore for oil and gas in the Gulf of Mexico. The purpose of these rules is to impose conditions on seismic exploration in the Gulf of Mexico that prevent any unacceptable effects on marine mammals, such as whales. NOAA/NMFS has not yet proposed any of these rules.

The oil and gas industry does not oppose Gulf of Mexico take rules. Moreover, the industry wants NOAA/NMFS to publish the rules soon, because the rules will provide certainty and protection against NGO attacks. However, environmental NGOs have a track record of demanding and litigating for seismic rules (as well as Navy sonar rules) that are impossible to comply with. If NGOs succeed in having NOAA/NMFS or a court implement seismic rules, then oil and gas exploration will shut down in the Gulf of Mexico. This result would cause a substantial loss of jobs throughout the Gulf area and throughout the rest of the United States. It would also increase the United States dependence on foreign oil.

C. EPA Endocrine Disrupter Screening Program

The Endocrine Disruptor Screening Program is EPA's response to a statutory requirement in the Food Quality Protection Act and the Safe Drinking Water Act Amendments in 1996. These amendments require that EPA screen pesticide chemicals for their potential to produce effects similar to those produced by the female hormones (estrogen) in humans. They give EPA the authority to screen certain other chemicals and to include other endocrine effects. In October 2009, after years of wasteful effort and millions of tax dollars spent, EPA produced a list of pesticide chemicals to be tested and list of 11 tests to be used in a so-called Tier 1 test program. Companies that fail the Tier 1 tests will have to conduct Tier 2 tests, which don't exist yet. The Tier 2 tests will determine whether the chemicals will be further regulated or perhaps even banned.

The cost of performing the EDSP tests will not likely cost many jobs, but the test results might. Failing these tests could result in a product ban or regulations so stringent that persons involved in their manufacture could lose their jobs. Farmers who depend on these pesticides might be unable to produce a profitable crop. These adverse consequences would be unacceptable, because most of the EDSP tests are unreliable. Many of the tests are new, and many of them did not pass peer review for their accuracy and reliability. Therefore, jobs could be lost on the basis of tests that have not been demonstrated to be adequate for their intended use.

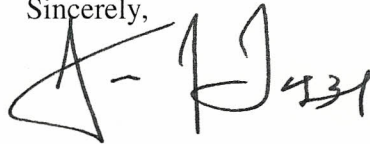
³ On May 19, 2010, Minerals Management Service was reorganized. The relevant agency is now the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE).

D. Conclusion

As a nationally recognized clearinghouse for methods to improve the federal regulatory process, CRE is very well acquainted with the significant impact and costs the regulatory framework can have on the U.S. economy. Accordingly, CRE is pleased to learn that the Committee on Oversight and Government Reform will be examining this essential issue.

CRE is pleased to have the opportunity to identify existing and proposed regulations that negatively impact job growth for the Committee on Oversight and Government Reform. CRE welcomes the opportunity to assist the Committee in the future as it considers the impact of these and other regulations on U.S jobs. Should you have any questions or require additional information, please contact me at (202) 265-2383.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Tozzi". The signature is stylized with a large, sweeping initial "J" and "T".

Jim Tozzi
Member, Board of Advisors