

1 AN EXAMINATION OF PROPOSED ENVIRONMENTAL REGULATION'S  
2 IMPACTS ON AMERICA'S SMALL BUSINESSES

3 - - -

4 TUESDAY, MAY 19, 2015

5 United States Senate,  
6 Committee on Small Business and Entrepreneurship,  
7 Washington, D.C.

8 The committee met, pursuant to notice, at 2:02 p.m., in  
9 Room 428A, Russell Senate Office Building, Hon. David  
10 Vitter, Chairman of the committee, presiding.

11 Present: Senators Vitter, Fischer, Gardner, Ernst,  
12 Ayotte, Shaheen, Markey, and Booker.

13 OPENING STATEMENT OF CHAIRMAN VITTER

14 Chairman Vitter. Good afternoon, everyone, and we will  
15 call the committee to order.

16 Welcome to the Senate Committee on Small Business and  
17 Entrepreneurship's hearing assessing the economic and  
18 regulatory impacts of the EPA and the Army Corps of  
19 Engineers proposed rule to redefine the term "waters of the  
20 United States," which will be finalized in the near future.

21 The purpose of this hearing is to examine the impact  
22 that the proposal will have on small businesses as well as  
23 the agencies' egregious circumvention of the very regulatory  
24 process set in place to protect small businesses.

25 Specifically, the EPA and the Corps have publicly concluded

1 that the proposed rule will not have any significant impact  
2 on a substantial number of small entities, and they also  
3 concluded that the proposal will have no direct impacts on  
4 small entities.

5 Now, I think this is flat out outrageous, that the  
6 administration would pretend that the proposal would not  
7 have a substantial and a direct impact on small businesses.  
8 It is so outrageous, in fact, that I will soon introduce a  
9 Sense of the Senate Resolution condemning the  
10 administration's circumvention of this important process and  
11 will hold a vote on that resolution in this committee.

12 Regarding the content of the rule, the sweeping  
13 language in the proposal represents a direct threat to  
14 private property rights. By expanding the types and numbers  
15 of water bodies subject to federal control, these agencies  
16 will further expand their authority enormously to tell home  
17 owners, small businesses, and others what they can do on  
18 their own property.

19 This provides an opening for the federal government to  
20 increase its role yet again, and dramatically, in local land  
21 use planning and decisions. State and local zoning  
22 commissions will see their rules displaced by Washington  
23 bureaucrats who do not truly understand the implications of  
24 the policy changes they will be pushing forward with. This  
25 will lead to costly litigation and expand the ability of

1 radical environmental groups to sue land owners over how  
2 they manage and use their own property. Additionally, the  
3 rule as proposed will have a significant negative impact on  
4 agriculture, and particularly smaller family farms.

5 On October 1, 2014, the Office of Advocacy, an  
6 independent office of the SBA, sent a letter to the EPA and  
7 the Army Corps that was highly critical of their finding  
8 that the proposal will not have any significant impact on a  
9 substantial number of small entities. The Office of  
10 Advocacy's role is to represent small entities in the  
11 federal rulemaking process. In fiscal year 2004, it  
12 achieved regulatory cost savings to small businesses of more  
13 than \$4.8 billion. A substantial part of these savings--in  
14 fact, the great majority, \$4.6 billion--arose from changes  
15 to proposed EPA regulations.

16 In his October letter, Advocacy unequivocally stated,  
17 and I quote, "Advocacy believes that EPA and the Corps have  
18 improperly certified the proposed rule under the Regulatory  
19 Flexibility Act because it would have direct significant  
20 effects on small businesses. Advocacy recommends that the  
21 agencies withdraw the rule and that the EPA conduct a Small  
22 Business Advocacy Review Panel before proceeding any further  
23 with this rulemaking," close quote. As we know, EPA has  
24 completely ignored that input.

25 Under the Regulatory Flexibility Act, when an agency

1 finds that a proposed rule will have a significant economic  
2 impact on a substantial number of small entities, it must  
3 evaluate the impact, consider alternatives, and in the case  
4 of EPA, convene a Small Business Advocacy Review Panel to  
5 consider the input of the Office of Advocacy and the small  
6 business community. But, by certifying that the rule will  
7 not have that impact, which is clearly just not the case,  
8 the EPA and the Corps effectively shut down this process  
9 mandated by law.

10 As Chair of the Small Business Committee, I am  
11 committed to ensuring that we do not allow that sort of  
12 action to proceed unchecked. That is why we are having this  
13 hearing. That is why we are going to have this resolution,  
14 which I will be introducing soon and certainly hope can gain  
15 bipartisan support in this committee and in the Senate  
16 overall.

17 Now, I turn to our distinguished Ranking Member,  
18 Senator Shaheen, for her opening comments.

19 OPENING STATEMENT OF SENATOR SHAHEEN

20 Senator Shaheen. Thank you, Mr. Chairman.

21 Good afternoon, everyone. Welcome to today's hearing.  
22 I want to begin by thanking both panels who are here to  
23 testify.

24 As the Chairman noted, today, we are discussing the  
25 impact of environmental regulations on small business, and

1 specifically we are going to focus on the joint efforts by  
2 the Environmental Protection Agency and the Corps of  
3 Engineers to amend their definition of waters of the United  
4 States. This term is integral to clarifying which bodies of  
5 water will be covered under the Clean Water Act.

6 I am pleased that our first panel, we will have Mr.  
7 Maresca, who is the Director of Interagency Affairs with the  
8 Office of Advocacy of the Small Business Administration,  
9 testifying. You will bring an important voice to this  
10 afternoon's hearing, given the role the Office of Advocacy  
11 has representing the interests of small businesses in the  
12 federal rulemaking process.

13 In addition, I think it is beneficial that our second  
14 panel provide small business perspectives across a variety  
15 of diverse industries, including agriculture, home building,  
16 and outdoor recreation.

17 I am disappointed that we do not have officials from  
18 the two relevant federal agencies who are charged with  
19 promulgating this rule joining us today. I believe that in  
20 order for there to be a meaningful and constructive  
21 conversation about the proposed rule's impact on small  
22 businesses, we need to have all parties who are part of this  
23 rulemaking process part of the discussion.

24 I hope that today's hearing is not about attacking the  
25 Clean Water Act or obstructing the efforts of the federal

1 government to make regulatory decisions. This hearing  
2 should focus on whether the agencies responsible for  
3 promulgating this rule, the Environmental Protection Agency  
4 and the U.S. Army Corps of Engineers, complied with their  
5 statutory requirements to ensure that small businesses are  
6 considered in the rulemaking process.

7 As we all know, the EPA and the Corps of Engineers  
8 determined that the rule would not have a significant impact  
9 on small businesses, and I am disappointed that they are not  
10 here to answer questions and tell us how they arrived at  
11 their conclusions.

12 It is my sincere hope that, moving forward, this  
13 committee can work together in a bipartisan manner to  
14 effectively communicate the interests of small businesses  
15 with federal agencies charged with crafting federal  
16 regulations.

17 So, thank you, Mr. Chairman, and I look forward to  
18 hearing from today's witnesses.

19 Chairman Vitter. Thank you very much, Senator Shaheen.

20 And, just for the record, let me point out that we  
21 would have welcomed the EPA and the Corps to be here, and it  
22 is my understanding that the Minority staff reached out to  
23 them about that and were basically told that they were not  
24 going to be coming. So, that underscores, I think, the  
25 frustration of many of us with their decision and with the

1 tone and the attitude they have taken in making this  
2 certification, which I think--I am just speaking for myself--  
3 -is just flat out contrary to a whole, whole lot of  
4 evidence.

5       Okay. At this point, I would like to introduce our  
6 first witness, Charles Maresca, Director of Interagency  
7 Affairs at the Small Business Administration's Office of  
8 Advocacy. Mr. Maresca will be the lone witness on the  
9 federal panel because of what I just said. He leads  
10 Advocacy's efforts to monitor federal agencies' compliance  
11 with the Regulatory Flexibility Act, and, of course, that is  
12 what we are talking about with regard to this proposed  
13 waters of the United States rule today.

14       Welcome, Mr. Maresca.

1                   STATEMENT OF CHARLES MARESCA, DIRECTOR OF  
2                   INTERAGENCY AFFAIRS, OFFICE OF ADVOCACY, U.S.  
3                   SMALL BUSINESS ADMINISTRATION

4           Mr. Maresca. Thank you, Chairman Vitter, Ranking  
5 Member Shaheen, members of the committee. I am honored to  
6 be here this afternoon to present testimony to you on behalf  
7 of the Office of Advocacy of the U.S. Small Business  
8 Administration regarding the Environmental Protection Agency  
9 and the Army Corps of Engineers's proposed rule on the  
10 definition of waters of the United States under the Clean  
11 Water Act.

12           Advocacy is an independent office within the SBA that  
13 speaks on behalf of the small business community before  
14 federal agencies, Congress, and the White House. The views  
15 in my testimony do not necessarily reflect the views of the  
16 administration or the SBA and this statement has not been  
17 circulated to the Office of Management and Budget for  
18 clearance.

19           And, I ask that my complete testimony be entered into  
20 the record. It includes a detailed background on Advocacy's  
21 work with this proposed rule, but I will just summarize my  
22 thoughts in these remarks.

23           Chairman Vitter. Without objection, that will be  
24 entered into the record.

25           Mr. Maresca. As Director of Interagency Affairs in the

1 SBA Office of Advocacy, I manage a team of attorneys that  
2 works with the federal government agencies during the  
3 rulemaking process to reduce the regulatory burdens on small  
4 businesses and oversee the requirements of the Regulatory  
5 Flexibility Act. The RFA requires federal agencies to  
6 consider the effects of their proposed rules on small  
7 businesses and other small entities, including small  
8 government jurisdictions and small nonprofits.

9 The Clean Water Act was enacted in 1972 to restore and  
10 maintain the integrity of the nation's waters. The Act  
11 requires a permit in order to discharge pollutants, dredged,  
12 or fill materials into any body of water deemed to be a  
13 water of the United States. The courts have left much  
14 uncertainty regarding what constitutes a water of the United  
15 States. This uncertainty makes it difficult for small  
16 entities to know which waters are subject to Clean Water Act  
17 jurisdiction and permitting.

18 To address this uncertainty, the EPA and the Corps have  
19 proposed a rule which would revise the regulatory definition  
20 of waters of the United States and would apply to all  
21 sections of the Clean Water Act. Advocacy has been engaged  
22 with EPA, the Corps, and small entities on this issue from  
23 its inception, including holding roundtable discussions in  
24 Washington, D.C. and Los Angeles, California, in July and  
25 August of 2014. In addition, the Office participated in two

1 small entity meetings held by EPA and the Corps in 2011 and  
2 2014.

3       Advocacy has met with and spoken to numerous  
4 individuals, small entities concerned about the effects of  
5 this rule over the last four years. These small entities  
6 represent many different industries, including but not  
7 limited to agriculture, real estate, home builders,  
8 cattlemen, farmers, and the mining industry. Feedback from  
9 these small entities has remained consistent. Small  
10 businesses believe that the rule as proposed by EPA and the  
11 Corps is an expansion of jurisdiction and will increase  
12 costs to small businesses.

13       On October 1, 2014, the Office of Advocacy sent a  
14 letter to EPA and the Corps expressing our concerns with  
15 their RFA compliance. Advocacy believes, first, the rule  
16 will impose direct costs on small businesses. Second, these  
17 costs will have a significant economic impact on those small  
18 businesses. And, third, the agencies incorrectly certified  
19 the rule and should have conducted a SBREFA panel.

20       In conclusion, Advocacy and small businesses are  
21 concerned about the rule as proposed. The rule will have a  
22 direct and potential costly impact on small businesses.  
23 Advocacy has advised the agencies to withdraw the rule and  
24 conduct the SBREFA panel prior to promulgating any final  
25 rule on this issue.

1           I would be happy to answer any questions you might  
2 have. Thank you.

3           [The prepared statement of Mr. Maresca follows:]

1 Chairman Vitter. Thank you very much, and we will  
2 start those questions.

3 Mr. Maresca, you stated in your testimony that EPA and  
4 the Corps should have certified that the proposal will have  
5 that significant economic impact on a substantial number of  
6 small business entities and, therefore, they should have  
7 convened an SBAR panel. Can you please explain how that  
8 panel process helps protect the interests of small  
9 businesses.

10 Mr. Maresca. Yes, Senator. The requirement of a panel  
11 that is in the RFA for EPA requires that they convene a  
12 meeting with small entity representatives. The panel  
13 consists of--would consist of EPA, Advocacy, and OMB. We  
14 would hear--they would present to those small entities any  
15 data that they had collected in support of the rule that  
16 they were proposing and they would suggest to the small  
17 entity representatives a number of regulatory alternatives,  
18 including a preferred option, in most cases, and the small  
19 entity representatives would have been given an opportunity  
20 to comment on all of those alternatives and to suggest ways  
21 that the rule could be--could mitigate the costs.

22 Chairman Vitter. So, just to clarify and make sure I  
23 understand, it is significant in at least two senses.  
24 Number one, the agencies would have to present their factual  
25 evidence and basis for this rulemaking, proposed rulemaking.

1 And, number two, they would have to present alternatives,  
2 correct?

3 Mr. Maresca. That is correct. That is the point of  
4 the SBREFA panels.

5 Chairman Vitter. Okay. Your testimony also states  
6 that the agencies incorrectly used a standard from 1986, a  
7 standard that has been abrogated by the U.S. Supreme Court,  
8 to find that the rule will not expand the jurisdiction of  
9 the Clean Water Act and, therefore, not affect small  
10 businesses. However, in their economic analysis, the EPA  
11 and the Corps used the more recent and correct standard to  
12 show that the rule could expand jurisdiction of the Clean  
13 Water Act. It seems like they are trying to have it both  
14 ways and use whatever standard is convenient at the time.  
15 Can you provide some additional detail on how the use of an  
16 incorrect baseline obscures what the real impacts of their  
17 proposal might be.

18 Mr. Maresca. Well, we believe that the impact of the  
19 rule is the change in practices that small businesses would  
20 have to begin. The way that agencies measure the costs of  
21 their rules in any regulatory analysis is governed by--  
22 generally governed by OMB Circular A-4, which tells them to  
23 use the world as it is, and the world as it is right now for  
24 waters of the United States is the EPA guidance from 2008.  
25 And, this rule would--the rule, as proposed, would expand

1 the jurisdiction as compared to that guidance.

2 Chairman Vitter. Okay. As we have discussed, the EPA  
3 and the Corps through this fraudulent certification are  
4 avoiding conducting this RFA analysis, including holding the  
5 SBAR panel. In your expert opinion, could the underlying  
6 RFA law be modified or strengthened to prevent this in the  
7 future?

8 Mr. Maresca. Senator, the problem with this rule as  
9 proposed is the misapplication of case law and the choice--  
10 the incorrect choice of a baseline. I am not sure how to--  
11 how we would amend the RFA to approach that, those problems.  
12 However, we do think that the RFA could be improved in the  
13 area of indirect effects and we would be happy to work with  
14 you on that.

15 Chairman Vitter. Could this improper action under  
16 federal law be the basis for future litigation challenging  
17 the rule?

18 Mr. Maresca. Certain parts of the RFA are judicially  
19 reviewable, and an incorrect certification is one of the--  
20 could be a basis for a complaint in federal court.

21 Chairman Vitter. Okay. Thank you. I will turn to  
22 Senator Shaheen.

23 Senator Shaheen. Thank you, Mr. Chairman.

24 I just wanted to clarify that it is my understanding,  
25 as well, that we asked both the EPA and the Army Corps to be

1 present at today's hearing and that they were not able to do  
2 so, they said, for scheduling reasons, so I wonder, Mr.  
3 Maresca, if you could talk about why neither of those  
4 agencies seem to feel--or said that there was no need to  
5 appoint a Small Business Advocacy Review Panel. What was  
6 the reasoning for that?

7 Mr. Maresca. The reasoning, as stated, is that the  
8 costs that are imposed by the rule are indirect and there is  
9 case law on the point that whether an agency needs to  
10 consider the indirect effects of a rule. We believe that  
11 the case law was misapplied. They also based their  
12 certification on the choice--on whether there was an  
13 expansion of jurisdiction or not. As compared with the 1986  
14 rule, there is not. As compared with the 2008 guidance,  
15 there is.

16 Senator Shaheen. Right. I understand that, and I know  
17 that you pointed that out in the letter. What was the  
18 response when you did that, because it would seem that it  
19 might be prudent to err on the side of, given the  
20 discrepancies in the statutes, to err on the side of making  
21 sure that they had responded to any potential small business  
22 concerns.

23 Mr. Maresca. Senator, we would agree with that. In  
24 their own economic analysis, EPA points out that there are,  
25 in fact, costs to this rule.

1           Senator Shaheen. As I have talked to representatives  
2 from small business, I have heard from some people who feel  
3 like there will be a significant impact because of this  
4 proposed rule. There are others who feel like they support  
5 it. There are others who feel like it does not really make  
6 any difference. So, I am sure you heard those different  
7 perspectives, and can you explain how Advocacy weighted  
8 those diverse perspectives as you were trying to make  
9 recommendations and consider the position.

10           Mr. Maresca. Senator, the statute requires us to do  
11 outreach to small businesses, and we have done an  
12 extraordinary amount of outreach on this rule, and we have  
13 heard from many, many small businesses in every industry  
14 that we have talked to that there are costs to this rule.  
15 We have examined EPA's numbers as they are in their own  
16 economic analysis and we conclude, along with EPA, that  
17 there are costs. We do not know at this moment how  
18 expensive those costs are. We do know that, according to  
19 EPA's own figures, the cost for a Section 404 permitting,  
20 for example, will increase by \$50 million, and we think that  
21 is at least \$50 million, and there are many, many other  
22 costs that have not been counted.

23           Senator Shaheen. So, when you were looking at the  
24 determination of impact, it was the cost issue that you were  
25 weighing as opposed to anything else that might be affecting

1 small businesses?

2 Mr. Maresca. That is typically what we look at, is the  
3 cost. The RFA does require us to look at ways to mitigate,  
4 to examine with the agencies ways to mitigate the cost of  
5 the rule in order to achieve the same regulatory objective.

6 Senator Shaheen. And, did you do that? Did you--when  
7 you brought those concerns about cost to the attention of  
8 the agencies, what was their response and did you have any  
9 discussions about potential mitigation to address those?

10 Mr. Maresca. Senator, in the several meetings that we  
11 have had with EPA, with the small entity representatives,  
12 with small business stakeholders, that has been brought up.  
13 I would suggest the response of EPA is this proposed rule.  
14 But, there has been--there is no--if there had been a SBREFA  
15 panel, there would have been a presentation of alternatives  
16 and there could have been a consideration of whether those  
17 alternatives--which of those alternatives would mitigate the  
18 cost to small entities the best.

19 Senator Shaheen. So, basically, they said, we do not  
20 need to appoint a panel because we do not think there are  
21 any costs involved.

22 Mr. Maresca. That is correct.

23 Senator Shaheen. Okay. Thank you, Mr. Chairman.

24 Chairman Vitter. As we go to Senator Ernst, I just  
25 want to clarify something. A couple of times, Senator

1 Shaheen asked about their response. In terms of your  
2 written letter strongly objecting to their certification,  
3 has there been any direct written response?

4 Mr. Maresca. No, Senator, there has not been a written  
5 response. That is not unusual. The statute requires that  
6 EPA respond in writing to our written comments, so we do  
7 expect there will be a written response, but there is not  
8 one at this point.

9 Chairman Vitter. There has not been to date?

10 Mr. Maresca. No.

11 Chairman Vitter. Is there any assurance that they are  
12 going to do that, even before they come up with this  
13 proposed rule?

14 Mr. Maresca. It would--as I say, it would be unusual  
15 for an agency to respond in writing to our comment letters  
16 before they issue a final rule.

17 Chairman Vitter. Okay. Senator Ernst.

18 Senator Ernst. Thank you, Mr. Chair, and thank you,  
19 Mr. Maresca, for being here today.

20 It is greatly concerning. I wish we would have had the  
21 Corps members and the EPA representatives here. Very early  
22 this year, I sent a letter to the EPA Administrator and  
23 asked her to come to Iowa. I would love to have her in Iowa  
24 with some of her leadership just to show her the impact on  
25 small businesses, manufacturers and members of our

1 agriculture community, when it comes to waters of the United  
2 States. I have yet to hear back from the EPA, which I  
3 thought was--at least they could have responded to me. So,  
4 very disappointed that they are not able to join us and give  
5 their perspective on this particular rule.

6 I am also concerned--you mentioned that the EPA,  
7 because they are not direct costs, just maybe indirect  
8 costs, they did not feel the need to look at this any  
9 further. That is deeply troubling to me because there are  
10 so many times that we talk through the implications of  
11 legislation or rules and regulations and what are those  
12 secondary and tertiary effects that will hurt our small  
13 businesses. So, disappointed to hear that.

14 But, in addition to the work here in the Small Business  
15 Committee, I also sit on Homeland Security and Governmental  
16 Affairs, and one of the subcommittees that I sit on also  
17 focuses on regulatory reform. And, through that particular  
18 subcommittee we have done a few hearings on the regulatory  
19 climate that we have right now, and one of the recurring  
20 themes I have heard about and we have discussed seems to be  
21 the trend of these federal agencies going around the  
22 necessary and appropriate economic and cost analysis--  
23 cost/benefit analysis.

24 And, as an independent office within the SBA, can you  
25 speak a little more about these issues as it pertains to the

1 federal agencies and them trying to circumvent what I see as  
2 a specified process. Can you speak to that?

3 Mr. Maresca. Certainly, Senator. In general, we find  
4 the agencies are very good at complying with the Regulatory  
5 Flexibility Act. We have worked with the agencies to train  
6 them in how to do that since 2003. And, in fact, EPA is one  
7 of our model agencies. So, when they make these kinds of  
8 judgments, it seems it is unusual. But, when they do, there  
9 are costs involved, and the RFA requires that they, in this  
10 case, convene a SBREFA panel.

11 Senator Ernst. Very good. Do you think that in this  
12 case, they did take any public comment into judgment? Did  
13 they look at those, do you believe? Have they indicated any  
14 of that to you?

15 Mr. Maresca. Well, they have--they also convened  
16 several roundtables and participated in stakeholder events.  
17 The outcome, again, is this rule that does have significant  
18 economic impact on small business.

19 Senator Ernst. Very good. Thank you.

20 Thank you, Mr. Chair.

21 Chairman Vitter. Sure. Senator Markey.

22 Senator Markey. Thank you, Mr. Chairman, very much.

23 Welcome, sir.

24 Mr. Maresca. Thank you.

25 Senator Markey. Thank you for being here. Clean water

1 is important to everyone. Eighty percent of small business  
2 owners, a clear majority, favor the rules, clarifications in  
3 wetlands protection set forth in the Clean Water rule, and  
4 EPA and Army Corps of Engineers have spent years engaging in  
5 a transparent rulemaking process. The agencies have met  
6 with stakeholder small businesses, received over one million  
7 comments, held over 400 outreach meetings, used important  
8 time and resources, and above all, important taxpayer  
9 dollars, and are now just weeks away from producing a final  
10 Clean Water rule that will protect our nation's vulnerable  
11 waterways and drinking water for 117 million Americans.

12 But, what you are saying is the agency should put the  
13 brakes on the implementation of this economically critical  
14 and scientifically rigorous rule before the public has even  
15 had a chance to see the finished product. A decision like  
16 that would disrupt and prolong the rulemaking and forces the  
17 agencies to go back and solicit input from stakeholders they  
18 have already consulted, consider factors they have already  
19 considered, and then propose the rule all over again.

20 Has your office considered the impact on small  
21 businesses of delaying the rulemaking and prolonging the  
22 uncertainty for small businesses about what will be  
23 regulated under the Clean Water Act?

24 Mr. Maresca. Yes, Senator. Those are concerns of our  
25 office. The main concern that we have is compliance with

1 the Regulatory Flexibility Act. Every rule that EPA  
2 produces has to comply with the RFA, and in this instance,  
3 it did not--they did not comply with the RFA. And, so we--  
4 and, so, our job at Advocacy is to speak for small  
5 businesses in that instance.

6 Senator Markey. Well, in the Environment and Public  
7 Works Committee, we heard testimony from the New Belgium  
8 Brewery on behalf of the businesses around the country that  
9 rely on clean water for the success of their business. How  
10 does the Office of Advocacy take the needs of those  
11 companies into effect?

12 Mr. Maresca. Senator, we take the needs of every small  
13 business that we possibly can into account. Again, our  
14 statutory obligation is to get federal agencies to comply  
15 with the Regulatory Flexibility Act, and in this instance,  
16 EPA should have convened a SBREFA panel.

17 Senator Markey. Well, the EPA has estimated that waste  
18 from mountaintop removal coal mining has buried between  
19 1,200 and 2,000 miles of Appalachian streams. This mining  
20 practice has in some communities been linked to  
21 contamination of water supplies, endangered wildlife, and  
22 threatened public health, all so that much of the coal  
23 produced from the Appalachian region can be exported to  
24 other countries in the world to increase profits for the  
25 coal companies.

1           By opposing the Clean Water rule, coal companies are  
2 continuing their assault on the administration's actions to  
3 protect the public health and the environment from  
4 mountaintop removal mining. Fossil fuel companies have also  
5 threatened legal challenges to the rule before it has even  
6 been issued.

7           Will you please tell the committee the groups and  
8 associations that your office met with or which groups  
9 encouraged the Office of Advocacy to submit your comments  
10 about the Clean Water rule.

11           Mr. Maresca. Senator, we met with small businesses in  
12 every industry that we could find. They all said that there  
13 were going to be costs to this rule.

14           Senator Markey. Will you submit to the committee the  
15 companies that you met with, just so that we can have an  
16 understanding of who it was that was seeking to lobby you on  
17 this issue?

18           Mr. Maresca. We would be happy to do that.

19           Senator Markey. Okay. That would be very helpful.

20           A delay in the Clean Water rule would provide  
21 confusion, not clarify, for small businesses and add to the  
22 delay of important infrastructure projects and will create  
23 jobs--that will create jobs and grow our economy. What  
24 would you say to an unemployed iron worker, laborer, or  
25 American driver that just crossed a near-crumbling bridge or

1 pothole about the delay in the final Clean Water rule?

2 Mr. Maresca. Senator, the point of the Regulatory  
3 Flexibility Act is to create an environment for small  
4 businesses to thrive and grow and provide more jobs,  
5 ultimately, and our job is to ensure that the federal  
6 agencies comply with the requirements of the statute.

7 Senator Markey. How many public meetings should an  
8 agency have to hold on a proposed rule, in your opinion?

9 Mr. Maresca. Senator, I would say that probably varies  
10 with the impact of the rule. But, in this instance, EPA  
11 should have convened a SBREFA panel.

12 Senator Markey. Is 400 outreach meetings insufficient  
13 to solicit input on a proposed rule?

14 Mr. Maresca. Senator, in none of those outreach  
15 meetings, to my knowledge, did EPA present regulatory  
16 alternatives or preferred option. In none of them did they  
17 present the data on which they were basing the rule.

18 Senator Markey. And, finally, are you aware that OMB  
19 reviewed the proposed rule and made the determination that  
20 the proposed rule would not have significant impact on small  
21 businesses? Are you aware of that?

22 Mr. Maresca. Senator, it is our statutory obligation  
23 to speak on behalf of small businesses when it comes to  
24 issues under the Regulatory Flexibility Act. In our  
25 opinion, EPA should have convened a SBREFA panel because

1 this rule will have impacts.

2 Senator Markey. I think that we should let the EPA do  
3 its job. I think delaying the Clean Water rules makes no  
4 sense. Small business owners need clarity, not confusion.  
5 That is what your recommendations are going to create and we  
6 are just going to repeat the same process and, I think, come  
7 to the same conclusions.

8 Thank you, Mr. Chairman.

9 Chairman Vitter. Thank you.

10 We will go to Senator Ayotte.

11 Senator Shaheen. Mr. Chairman, before we do that, can  
12 I just ask that when we receive the list from the Office of  
13 Advocacy about the businesses you met with, that that be  
14 shared with all of the members of the committee?

15 Chairman Vitter. Certainly. Of course. Without  
16 objection.

17 Senator Shaheen. Thank you.

18 Chairman Vitter. And, now we will go to Senator  
19 Gardner.

20 Senator Gardner. Thank you, Mr. Chairman. Thank you  
21 for holding this hearing, and to Ranking Member Shaheen,  
22 thank you, as well, and to Mr. Maresca, thank you for being  
23 here.

24 I, unfortunately, came in later to the discussion on  
25 waters of the United States, but I do want to stress one of

1 the challenges that we have in Colorado. Of course, we are  
2 unique amongst the states. We are the only state in the  
3 country that distributes our water rights the way we do,  
4 through a court system. We are entirely unique in that in  
5 the lower 48 states, all of the water flows out of Colorado.  
6 No water flows into Colorado.

7 In conversations with the EPA Administrator, Gina  
8 McCarthy, at a hearing last year in the Energy and Commerce  
9 Committee, I asked point blank if she was familiar with  
10 Colorado water law and her response back was she is not  
11 familiar with Colorado water law. And, I think the  
12 challenges--just one of the many challenges that we face,  
13 that this rule would apply to rivers that are intermittent  
14 flow. Two-thirds of Colorado waterways are intermittent  
15 flow, and yet waters of the United States would still affect  
16 and impact every single one of them, even though they do not  
17 have water in them year-round.

18 In meetings with Colorado water districts, whether it  
19 is Northern Colorado Water Conservancy Districts, whether it  
20 is Denver Water, Colorado Springs Utilities, or the Colorado  
21 Farm Bureau, every one of them is concerned about the  
22 federalization of every molecule of water in the State of  
23 Colorado, and so I think you are right to make sure and  
24 demand that these hearings proceed in terms of understanding  
25 all that the waters of the United States rule would do to

1 small businesses, particularly in light of the way a state  
2 like Colorado manages its water rights.

3 I wanted to shift focus a little bit to the Endangered  
4 Species Act. A few years ago, the Small Business  
5 Administration's Office of Advocacy submitted comments to  
6 the Fish and Wildlife Service on a proposed rule on  
7 designation of critical habitat for the New Mexico jumping  
8 mouse. The Office of Advocacy expressed several concerns  
9 about listing the mouse under the Endangered Species Act and  
10 stated that the designation would impose direct costs on the  
11 nation's small businesses.

12 As we have seen in Colorado, we have got the Gunnison  
13 and greater sage grouse. The Gunnison was just listed. I  
14 believe there is litigation coming forward from Governor  
15 Hickenlooper in the state. We have challenges with the  
16 lesser prairie chicken and, of course, the Preble jumping  
17 mouse.

18 Just yesterday, the administration announced proposed  
19 updates to the implementation of the Endangered Species Act,  
20 which, it is my understanding, are intended to give states a  
21 greater voice in the listing determinations. How can the  
22 Office of Advocacy further insert themselves into this type  
23 of policy making, since small businesses are our nation's  
24 job creators?

25 Mr. Maresca. Well, with regard--thank you, Senator.

1 With regard to the Endangered Species Act, we believe that  
2 Fish and Wildlife Service could do a better job in  
3 considering the impacts, not of the listing, necessarily,  
4 but of the critical habitat designations, and we have been  
5 working with that agency over many, many different CHDs.

6 Senator Gardner. So, how would you improve the  
7 critical habitat designation? Does that mean taking into  
8 account, for instance, in the greater sage grouse, the 11  
9 states, would that suggestion say, take a look at the large  
10 land area that would be involved and then doing an economic  
11 analysis of the impact that land area would have for  
12 critical habitat?

13 Mr. Maresca. We believe that Fish and Wildlife could  
14 take better account of the economic analysis. They have  
15 broad authority to exclude certain parts of an initial CHD,  
16 and we have been working with the agency on that.

17 Senator Gardner. And, your concern about critical  
18 habitat, of course, is because that land then is taken out  
19 of either production value or recreational interest  
20 activities. Is that why, primarily?

21 Mr. Maresca. That would be the impact. That would be  
22 the impact. The point of the Regulatory Flexibility Act is  
23 not to avoid the outcomes that another statute might  
24 require, but that whatever regulatory option an agency  
25 considers, it considered that with the least impact on small

1 businesses.

2 Senator Gardner. Okay. Under the Regulatory  
3 Flexibility Act, do you believe that we are right now  
4 properly evaluating listings prior--excuse me, that we are  
5 taking actions and considering them properly under the RFA  
6 prior to ESD listing?

7 Mr. Maresca. Prior to the listing?

8 Senator Gardner. Yes.

9 Mr. Maresca. Uh--

10 Senator Gardner. And how could we improve that process  
11 so that Fish and Wildlife Service does this--

12 Mr. Maresca. We believe that post-listing, prior to  
13 the critical habitat designation, improvements could be  
14 made.

15 Senator Gardner. What kind of improvements?

16 Mr. Maresca. Improvements in how Fish and Wildlife  
17 considers the economic impact and takes that into account.

18 Senator Gardner. What would that improvement--what  
19 would that consideration look like in how they take it into  
20 account?

21 Mr. Maresca. It would probably--it would--Senator, I  
22 believe it would take a combined effort by our office and  
23 Fish and Wildlife to come up with a system that would  
24 actually accomplish that.

25 Senator Gardner. Thank you.

1           Thanks, Mr. Chairman.

2           Chairman Vitter. Thank you.

3           And, before we go on to our second panel, I just wanted  
4 to follow up on Senator Markey's thoughts. Mr. Maresca, in  
5 the Regulatory Flexibility Act, is there sort of an "ends  
6 justifies the means" section that says, you know, if the  
7 rule is really, really good, we do not have to worry about  
8 following the law, or if we consult stakeholders in a  
9 different way, we do not have to worry about convening this  
10 sort of panel?

11           Mr. Maresca. Senator, there is no exception to the  
12 requirement of convening a panel, at least not without  
13 consulting with the Chief Counsel for Advocacy. Under a  
14 section of the RFA, it could be waived, but that is only  
15 under extraordinary circumstances.

16           Chairman Vitter. Okay. Thank you.

17           Senator Shaheen, anything else?

18           Senator Shaheen. No further questions.

19           Chairman Vitter. Great. Thank you very much, Mr.  
20 Maresca.

21           We will move on to our second panel, and as the second  
22 panel gets seated, I will invite Senator Ernst to recognize  
23 and introduce Mrs. Maulsby on the second panel.

24                            OPENING STATEMENT OF SENATOR ERNST

25           Senator Ernst. Yes. Thank you, Mr. Chairman, very

1 much.

2 As the second panel is getting settled, I will go ahead  
3 and start off by thanking all of you for joining us here  
4 today. It is good to have you with us.

5 I do appreciate your testimony and attention to this  
6 important widespread economic and regulatory issue. The  
7 EPA's proposed expanded definition of waters of the United  
8 States, or as we fondly call it, WOTUS, will add unnecessary  
9 bureaucratic red tape for our producers in the agriculture  
10 and small business communities.

11 The EPA has stated that the rule has been crafted with  
12 the intentions of creating clarity and increasing efficiency  
13 for key stakeholders. However, in reality, the proposed  
14 rule has only expanded confusion and uncertainty as to how  
15 far the jurisdiction of the Clean Water Act reaches.

16 It is incredibly important that before this rule is  
17 finalized, we stop it from having any negative consequences  
18 on our producers and businesses. And, if the EPA still  
19 fails to listen to the many voices raising concerns,  
20 including those of many of you in this room today, then we  
21 should all come together and oppose this rule.

22 Today, it is my great pleasure to introduce one of  
23 those voices. Darcy Maulsby is a fifth-generation corn and  
24 soybean farmer and small business owner from Lake City,  
25 Iowa. Her work, both on the farm and in owning a

1 communications and marketing business, has given her a  
2 unique opportunity to engage local, national, and world  
3 leaders to promote the benefits of agriculture to our  
4 economy. Mrs. Maulsby has used her skills in journalism and  
5 mass communications to reach untold audiences, promoting the  
6 importance of improving production and conservation  
7 practices and life in rural America.

8 Mrs. Maulsby, Darcy, it is always good to have a fellow  
9 Iowan in Washington, and thank you very much for testifying  
10 today. Your words are going to be very important for this  
11 panel. I will not be able to stay for questions, but I will  
12 submit those for the record.

13 And, just so everybody knows, they did have quite an  
14 episode a few weeks ago with a tornado that came through  
15 Lake City, and so, Darcy, we appreciate the extra effort  
16 that it took for you to come and be with us today, so thank  
17 you very much, and thanks to everybody on the panel, as  
18 well.

19 Thank you.

20 Chairman Vitter. Thank you, Senator, and let me just  
21 round out the introductions.

22 Randy Noel is President of Reve Incorporated, a custom  
23 home building company based in La Place, Louisiana.

24 Elizabeth Milito is Senior Executive Counsel with the  
25 National Federation of Independent Business's Small Business

1 Legal Center in Washington, D.C.

2 And, Benjamin Bulis is President of the American Fly  
3 Fishing Trade Association on Bozeman, Montana.

4 Welcome to all of you. We look forward to your  
5 testimony in the order in which you have been introduced.  
6 Ms. Maulsby.

1                   STATEMENT OF DARCY DOUGHERTY MAULSBY, FIFTH-  
2                   GENERATION FARMER, DOUGHERTY FARM, LAKE CITY, IOWA

3           Mrs. Maulsby. Well, good afternoon. I am Darcy  
4   Maulsby, a fifth-generation farmer and small business owner  
5   from Lake City. Let me begin by thanking you, Chairman  
6   Vitter, Ranking Member Shaheen, and members of the committee  
7   for allowing me the opportunity to share my story with you  
8   today. I especially want to thank my home state Senator for  
9   inviting me to testify. Thank you, Senator Ernst--even  
10  though she has left the room--for this opportunity and the  
11  warm introduction.

12           Our farm is located in west central Iowa. This is a  
13  beautiful area where the fields are mainly flat or gently  
14  rolling and are filled with rich black soil. While this  
15  soil is extremely productive, it also needs proper  
16  management and drainage to protect the health of our corn  
17  and our soybean crops.

18           My family and farmers all across Iowa are investing in  
19  conservation practices that prevent nutrient runoff and  
20  safeguard water quality. Ever since my ancestors settled in  
21  Calhoun County in the 1880s, my family has adopted a variety  
22  of conservation practices to protect our precious natural  
23  resources. We have installed grass waterways to slow the  
24  flow of water and keep soil in place. We also use  
25  conservation tillage to leave cornstalks and soybean stubble

1 in the fields over the winter to protect soil from water and  
2 wind erosion and to control surface runoff.

3 We have taken some big steps to implement conservation  
4 efforts, but one thing we cannot control is Mother Nature.  
5 Just over a week ago, on Mother's Day, an EF-1 tornado  
6 ripped through our area. Less than an hour later, a second  
7 storm blasted our farm with hail and dumped more than an  
8 inch-and-a-half of rain in a matter of minutes. This  
9 created some fairly large ponds in some of our fields, since  
10 the heavy clay soils just could not drain that water fast  
11 enough. The ponds are temporary, though, and they  
12 disappeared in a few days.

13 Across my area and much of Iowa, it is not uncommon for  
14 puddles and ponds to appear after a heavy rain in areas that  
15 are otherwise dry most of the year. Expanding EPA's  
16 regulatory authority under the Clean Water Act to include  
17 these and similar areas will have many negative consequences  
18 for my farm business. Not only will this rule affect my  
19 operation personally, but it will have dramatic and far-  
20 reaching potential and costly economic implications on  
21 farmers and ranchers all across the United States.

22 One of the biggest problems with this rule is the  
23 uncertainty that it creates. I look around my family farm  
24 and I wonder what areas would be under EPA's jurisdiction.  
25 There are many features on farmland that contain or carry

1 water only when it rains. Farmers and ranchers consider  
2 these areas to be land, not water that could be regulated by  
3 the EPA. If this agency can regulate every body of water on  
4 my farm, including those that are dry most of the time, then  
5 there are effectively no limits to the agency's regulatory  
6 reach.

7 The regulation of these areas means that any activity,  
8 including everyday farming activities, could be a violation  
9 of the Clean Water Act, triggering heavy penalties, criminal  
10 fines, and possibly resulting in jail time. Not only would  
11 we be subject to enforcement from the EPA and the Corps, but  
12 also civil lawsuits from those who do not understand  
13 agriculture and belong to organizations who are opposed to  
14 our way of life.

15 I am also concerned about how the rule will hinder the  
16 ability to keep our farm competitive, profitable, and  
17 sustainable. Tens of thousands of dollars to obtain permits  
18 along with fees for both lawyers and technical consultants  
19 is beyond the means of most farmers and ranchers and creates  
20 an undue burden for most farms, which are largely family-  
21 owned operations. These permits may take months to more  
22 than two years to obtain. Having to wait to obtain a permit  
23 would hinder our ability to operate and do what we know is  
24 best for our land. As a result, the proposed rule puts EPA  
25 into the business of regulating whether, when, and how a

1 farmer's crops may be grown and protected.

2 Perhaps the largest cost of this rule is not being  
3 allowed to apply crop nutrients and crop protection products  
4 in and around these EPA-controlled areas. We have always  
5 worked to be good stewards of our land and want to prepare  
6 now for a sustainable future for our farm. If we cannot do  
7 the right things for our land and our crops when the job  
8 needs to be done, farming and ranching will be much more  
9 costly and more difficult.

10 I am also concerned about how permitting delays would  
11 hold up conservation efforts on our farm and farms  
12 nationwide. We have already experienced this on my farm  
13 when we applied for a permit for a drainage improvement. In  
14 this case, the permitting process was not completed in a  
15 timely manner due to delays from an agency. This cost us  
16 valuable time and hindered our ability to enhance our land,  
17 and it complicated the process of completing routine field  
18 work.

19 We are continually implementing voluntary conservation  
20 efforts using our own time, energy, and money. The only  
21 thing that is clear and certain is that this rule will make  
22 it more difficult for farm families like mine to make  
23 changes in the land that will benefit the environment.  
24 Working with farmers collaboratively is a productive way to  
25 improve water quality, not more regulations.

1           Ultimately, this rule will have a negative impact on  
2 the productivity and profitability of small farming  
3 businesses all across the country, those one percent of  
4 Americans who grow the food, fuel, and fiber for this  
5 country and the world.

6           As a fifth-generation farmer, I truly care about the  
7 legacy my family will leave behind. I urge you to think  
8 about the legacy that will be left behind if this harmful  
9 rule is implemented. This rule should be repealed in full  
10 to protect the livelihood and way of life for my family and  
11 farm families all across this great land. Thank you.

12           [The prepared statement of Mrs. Maulsby follows:]

1 Chairman Vitter. Thank you very much, Mrs. Maulsby.

2 And now, we will hear from Mr. Randy Noel. Welcome.

1           STATEMENT OF KARL RANDALL "RANDY" NOEL, PRESIDENT,  
2           REVE INCORPORATED, LA PLACE, LOUISIANA, AND THIRD  
3           VICE CHAIRMAN, NATIONAL ASSOCIATION OF HOME  
4           BUILDERS

5           Mr. Noel. Thank you, Chairman Vitter and Ranking  
6 Member Shaheen, for the opportunity to address you today. I  
7 am a home builder in La Place, Louisiana, which is just west  
8 of New Orleans, and I am also the NAHB, the National  
9 Association of Home Builders, 2015 Third Vice Chairman, and  
10 I represent about 140,000 people.

11           Home building is one of the most regulated activities  
12 in the country, and as a small business owner, I can tell  
13 you from 30 years of home building experience what it will  
14 take to make a good rule. It needs to be consistent for all  
15 the citizens. It needs to be predictable to assure  
16 compliance. And, it needs to be timely to serve our  
17 citizens efficiently. Most important, it needs to focus on  
18 protecting true wetlands and streams.

19           The proposed rule does none of that. For decades,  
20 landowners and regulators alike have been frustrated by  
21 confusion over the definition of waters of the United  
22 States. When EPA and the Army Corps of Engineers proposed  
23 this rule, we were actually optimistic that it would finally  
24 provide clarity and certainty. Unfortunately, the proposed  
25 rule falls far short of that. In a word, it is a mess.

1           Instead of clarity, it provides broader definitions of  
2 existing regulatory categories, such as tributaries, and it  
3 seeks to regulate new areas that are not currently federally  
4 regulated, such as adjacent non-wetlands, riparian areas,  
5 flood plains, and other waters. It appears that the  
6 agencies have intentionally created overly-broad terms so  
7 that they would have the authority to interpret them any way  
8 they would like.

9           This rule is so extreme that the federal government  
10 would actually regulate roadside ditches, or water features  
11 that may flow only after a heavy rainfall. This rule would  
12 leave me playing a guessing game of whether my land requires  
13 a permit or not. That does not work.

14          I am a small business owner. I need to know the rules,  
15 not have to guess at them. And, because of the vague  
16 definitions, builders would face new, costly delays just  
17 waiting for the agencies to determine if a roadside ditch is  
18 a water of the United States.

19          My business has already been a victim of a costly  
20 permitting system. I have been forced to walk away from  
21 building projects due to excessive permitting and mitigation  
22 costs. The only winners with the proposed rule would be  
23 lawyers, because this rule would certainly lead to increased  
24 litigation.

25          I think it is important to note that this proposed rule

1 also destroys a key component of the Clean Water Act. The  
2 Act intended to create a partnership between the federal  
3 agencies and state governments to protect our nation's water  
4 resources. Congress correctly recognized that there is a  
5 point where federal authority ends and state authority  
6 begins. The agencies' solution is to federalize nearly  
7 every water feature.

8 States have effectively regulated their own waters and  
9 wetlands for years. My home State of Louisiana is a perfect  
10 example of a state that has gone to great lengths in order  
11 to protect its waters. Louisiana already has multiple laws  
12 on the books designed to protect our state water resources.

13 The agencies also failed to consider the rule's impact  
14 on small businesses by ignoring, as you pointed out earlier,  
15 the Regulatory Flexibility Act. Since the agencies failed  
16 to convene a small business panel, it is clear that they are  
17 not interested in hearing from small businesses like mine.

18 Unfortunately, the EPA completely ignores RFA  
19 requirements all the time. This is not something unique to  
20 this particular rule. In the 19 years since the small  
21 business panel requirement has existed, the EPA has convened  
22 approximately 47 panels. Just last year, the EPA reviewed  
23 51 significant rules. It defies belief that in one year,  
24 EPA reviewed more regulations than the total number of  
25 SBREFA panels held over 19 years. This illustrates how

1 reluctant some agencies are to comply with the law.

2 And, the agencies' economic analysis of the proposed  
3 rule is so full of errors that one noted economist said the  
4 study was virtually meaningless. That should give us all  
5 pause.

6 I called this a mess, and it is, but we can start to  
7 fix the mess. The EPA should withdraw the economic analysis  
8 and prepare a more thorough and accurate analysis. The  
9 RFA's legal requirements should be followed. And, any final  
10 rule should provide easily understood definitions and  
11 preserve the partnership between all levels of government.

12 Let us get the agencies to withdraw the rule. Fix this  
13 mess. Provide the clarity we all need on what constitutes a  
14 water of the United States.

15 Thank you again for the opportunity to testify.

16 [The prepared statement of Mr. Noel follows:]

1 Chairman Vitter. Thank you very much, Mr. Noel.

2 Now, we will hear from Elizabeth Milito with NFIB.

3 Welcome.

1           STATEMENT OF ELIZABETH MILITO, SENIOR EXECUTIVE  
2           COUNSEL, NATIONAL FEDERATION OF INDEPENDENT  
3           BUSINESS

4           Ms. Milito. Thank you very much, Chairman Vitter and  
5 Ranking Member Shaheen, for inviting me to participate in  
6 the hearing today.

7           The National Federation of Independent Business is very  
8 appreciative of the committee's interest in this rule and  
9 your examination of what we believe was a failure by two  
10 federal agencies to comply with the Regulatory Flexibility  
11 Act. I would like to commend the work that SBA's Office of  
12 Advocacy has done on this rule and I would also like to  
13 especially thank Mrs. Maulsby and Mr. Noel for coming here  
14 and making the trip here to Washington to testify today.

15          The agencies have proposed to change the Clean Water  
16 Act's definition for waters of the United States. Though  
17 traditionally limited to navigable waters and adjacent  
18 waters, this new proposal would classify land as waters of  
19 the United States if, at any point during the year, they  
20 have any water overflow. The new rule would bring seasonal  
21 streams, ponds, ditches, depressions in fields, and large  
22 puddles into the Clean Water Act's jurisdiction.

23          What does this mean for a small business owner? Well,  
24 if EPA and the Army Corps assert jurisdiction over your  
25 land, it will be essentially impossible, or at least

1 tremendously expensive, to do anything with your land. This  
2 means you will not be allowed to alter land formations,  
3 which prevents land owners from digging or excavating on  
4 their properties or even laying gravel.

5 While it is possible to obtain a special permit to  
6 begin using portions of land covered by the Clean Water Act,  
7 these permits are extremely expensive. Clean Water Act  
8 permits can cost tens of thousands of dollars, if not more.  
9 A major U.S. Supreme Court decision from 2006 cited the  
10 average cost at \$270,000. And, there are inevitably long  
11 waits for permit processing with no guarantee that your  
12 permit will be approved. But, proceeding without a permit  
13 could be ruinous. The penalties for violations of the Clean  
14 Water Act can be up to \$37,500 per day.

15 NFIB and other small business stakeholders firmly  
16 believe that the agencies did not adequately consider the  
17 impact of this proposed rule on small businesses and,  
18 therefore, failed to meet their legal obligations under the  
19 RFA.

20 EPA and the Corps is alleging that since there is a  
21 simple definition change, there are no major costs directly  
22 imposed on small businesses. But, as I have already noted,  
23 there are certainly costs directly imposed on small  
24 businesses through the permit process and other compliance  
25 requirements. In addition, the proposed rule makes it clear

1 that many waters will need to be determined on a case-by-  
2 case basis, therefore providing little, if any, additional  
3 certainty. While multinational corporations with tremendous  
4 capital resources can obviously afford the permitting costs,  
5 most small businesses cannot. Usually, their only option is  
6 to swallow their losses and forego any development plans.

7 In addition to the direct economic consequences on  
8 small businesses, the proposed rule will also have indirect  
9 adverse impacts on firms. Even in the absence of an  
10 affirmative assertion of Clean Water Act jurisdiction,  
11 landowners are going to be more hesitant to engage in  
12 development projects or make other economically beneficial  
13 uses of their property if the proposed rule is allowed.

14 Landowners are aware that federal agencies have taken  
15 an aggressive posture in making jurisdictional assertions in  
16 recent years. NFIB already receives questions and concerns  
17 from small business owners who are worried about whether or  
18 not the agencies have jurisdiction over their land, and we  
19 expect to hear from many more concerned individuals if the  
20 rule is finalized. Indeed, under the proposed rule, a  
21 landowner may have legitimate cause for concern if at any  
22 point during the year, as Mrs. Maulsby indicated, any amount  
23 of water rests or flows over a property.

24 And, contrary to the agency's assertions, the proposed  
25 rule will do little or nothing to make Clean Water Act

1 jurisdiction clearer or more certain for property owners.  
2 The reality is that landowners will have to seek out experts  
3 and legal counsel, which gets costly very quickly, before  
4 developing on any segment of land that occasionally has  
5 water overflow. And, the only way to have real clarity is  
6 to seek a formal jurisdictional determination from the  
7 agencies, which is going to cost even more money and lead to  
8 even more delays, delays which might cause a bank to pull  
9 financing on a project.

10 In short, this proposed rule will be a boon for  
11 environmental consultants, and potentially lawyers, too, but  
12 it is going to be a bust for small businesses.

13 In closing, I would like to underscore NFIB's  
14 frustration with the agencies' disregard for their statutory  
15 obligation under the RFA. We believe the agencies should  
16 acknowledge that the proposed rule will have a significant  
17 economic impact on a substantial number of small businesses.  
18 Withdraw the proposed rule and propose a new rule only after  
19 they have performed an initial Regulatory Flexibility Act  
20 analysis and convened a Small Business Advocacy Review  
21 Panel.

22 Thank you again for the opportunity today. We remain  
23 eager to work with members of the committee on this issue.  
24 Thank you.

25 [The prepared statement of Ms. Milito follows:]

1 Chairman Vitter. Thank you, Ms. Milito.

2 And now, we will hear from Benjamin Bulis with the

3 American Fly Fishing Trade Association. Welcome.

1                   STATEMENT OF BENJAMIN BULIS, PRESIDENT, AMERICAN  
2                   FLY FISHING TRADE ASSOCIATION

3           Mr. Bulis. Thank you. Good afternoon, Mr. Chairman  
4 and members of the subcommittee. I appreciate the  
5 opportunity to provide testimony in support of the Clean  
6 Water Act today.

7           I had the good fortune to be born and raised in the  
8 beautiful State of New Hampshire. I personally have fished  
9 in the United States and around the world, but the rivers  
10 and streams of New Hampshire will always stay close to my  
11 heart. Now, I have the great fortune to live in Bozeman,  
12 Montana, and one could argue is the epicenter of the fly  
13 fishing industry.

14           AFFTA represents the business of fly fishing, which  
15 includes manufacturers, retailers, outfitters, and guides  
16 across the nation who all share the same bottom line,  
17 furthering the sport and industry of fly fishing. This  
18 cannot be accomplished without clean water and vibrant  
19 fisheries habitat. The formula that drives AFFTA is very  
20 simple. Access to healthy habitat creates recreational  
21 opportunity that drives economic activities and jobs.

22           Our industry provides the waders, rods, guides, and  
23 boats that 47 million sportsmen and women utilize every time  
24 they step foot in their favorite piece of water. Their  
25 quality of experience, and, thus, our return sales to

1 enhance those days, is dependent on access to clean water.

2 I am here to express our support for the Army Corps of  
3 Engineers and the Environmental Protection Agency's efforts  
4 to restore protections for our nation's headwaters, streams,  
5 and wetlands under the Clean Water Act. Simply put, the  
6 draft clean water rule is well crafted and appropriate. It  
7 should be allowed to move through the federal rulemaking  
8 process with the support of Congress, and here is why.

9 The small waters to which this important draft rule  
10 applies are the lifeblood for many of our country's prized  
11 fisheries. The health of these headwaters sets the tone and  
12 benefits for all waters downstream, supporting and creating  
13 even the backbone of our nation's marine resources. They  
14 flow into rivers, streams, and lakes that provide the  
15 foundation of our industry, thus eventually concluding the  
16 voyage in our oceans. Our industry's viability depends on  
17 intact watersheds, cold, clean rivers and streams, and  
18 healthy, fishable habitat.

19 Given that fishing in America supports approximately  
20 828,000 jobs, results in nearly \$50 billion annually in  
21 retail sales, and has an economic impact of about \$115  
22 billion every year, it stands to reason that the health of  
23 our nation's waters is vital to the continued success of our  
24 industry and to the health of America's economy.

25 We urge you to allow the rulemaking process to continue

1 unimpeded. Carefully review the final rule when it comes  
2 out and then determine what, if any, legislative action is  
3 warranted.

4         We owe it to more than the one million Americans who  
5 took the time to comment on the proposal to allow the  
6 process to reach a conclusion. More than 80 percent of  
7 those who commented on the proposal were in favor of it.  
8 Such strong support for clean water and healthy watersheds  
9 is what our members experience every day as we interact with  
10 our customers across the nation.

11         If we fail to protect our headwaters, streams, and  
12 wetlands, we may destroy the \$200 billion annual economy of  
13 the hunting and fishing industry, as well as put 1.5 million  
14 people out of work. Of those 1.5 million jobs, many are  
15 located in rural areas with limited economic opportunity and  
16 few other employment options.

17         In recent years, participation in fly fishing has  
18 grown. We are seeing robust interest in our sport and it is  
19 translating to our sales, to the numbers of employees we  
20 hire right here in America, and to the health of brick-and-  
21 mortar retailers all over the country.

22         The fly fishing industry is the epitome of small  
23 business. The sustainable domestic industry is dependent on  
24 clean, fishable water.

25         And, again, on behalf of my Association and our

1 members, I appreciate the opportunity to testify today, and  
2 I would also like to thank the committee and staff for their  
3 dedication to our nation. Thank you.

4 [The prepared statement of Mr. Bulis follows:]

1 Chairman Vitter. Thank you all very much. We will now  
2 go to questions.

3 Let me start by asking each of you to respond, but as  
4 concisely as you can, and the question is this, not whether  
5 you are in favor of clean water, not whether you think the  
6 proposed rule is a good one, but whether you think the  
7 proposed rule would have a significant impact on a  
8 substantial number of small businesses, which is the small  
9 business issue we are talking about in terms of following  
10 the law. Could each of you respond, what you think about  
11 that.

12 Mrs. Maulsby. Yes. From the farmers' standpoint, it  
13 would have a huge impact on not just my farm and farms  
14 across Iowa, but farms and ranches across the whole country.  
15 It is a very serious issue that we are all very concerned  
16 about.

17 Chairman Vitter. Okay. Mr. Noel.

18 Mr. Noel. Absolutely. We drain our neighborhood  
19 sometimes with roadside ditches and we have to put driveways  
20 over them. If we are forced to go get permits to put  
21 driveways in, it will obviously slow down the production of  
22 homes and houses for people.

23 Chairman Vitter. All right. Ms. Milito.

24 Ms. Milito. And, yes, I would agree that it will have  
25 a substantial impact, and I think the agencies' own

1 administrative record also shows that it will, too. I mean,  
2 it is going to increase jurisdiction of the Clean Water Act  
3 by about three percent.

4 Chairman Vitter. Okay. Mr. Bulis.

5 Mr. Bulis. Yes. I think without this rule, it will  
6 have a significant impact on our industry. As I said, the  
7 1.5 million jobs that are associated with the hunting and  
8 fishing industry, those could be at jeopardy.

9 Chairman Vitter. Okay. I appreciate your answer to a  
10 different question, but let me restate my question. Do you  
11 think this proposed rule will have a significant impact on a  
12 substantial number of small businesses?

13 Mr. Bulis. You know, I cannot speak for these other  
14 businesses. I can only speak for the fly fishing industry,  
15 and I am not sure how they would affect their businesses.

16 Chairman Vitter. Okay. Ms. Maulsby, in general, how  
17 do you think the agricultural community has been engaged and  
18 their concerns have been incorporated into the substance of  
19 the proposed rule?

20 Mrs. Maulsby. One thing that we were disappointed  
21 about was that there were no hearings held in Iowa, and we  
22 would--just like Senator Ernst said, we would love to have  
23 EPA come out, and lawmakers, too. Our farms are open for  
24 tours. We would love to have people come out and see what  
25 we are doing on our land for conservation, the steps we are

1 taking to keep the land more sustainable, and it is not just  
2 me. I have got lots of friends and neighbors that feel the  
3 same way. So, we would love to have people come out and  
4 actually see what is going on with conservation on the  
5 ground.

6 Chairman Vitter. Okay. Mrs. Maulsby and Mr. Noel, let  
7 me ask you this. You all have brought up situations like  
8 temporary standing water ponds and roadside ditches and  
9 small amounts of water that driveways may go over, drainage  
10 ditches. Now, I know in a lot of these meetings and  
11 conversations, EPA and the Corps say, oh, no, no, no. We  
12 are not talking about that. Is there anything we can point  
13 to and read in the proposed rule that makes that very clear?

14 Mrs. Maulsby. No. That is the confusion. That is the  
15 uncertainty. There are no clear-cut answers to that type of  
16 information, and it is just that uncertainty that is so  
17 detrimental to the farm community and one of the things we  
18 are very concerned about with this proposed rule.

19 Chairman Vitter. Mr. Noel.

20 Mr. Noel. Yes, Senator Vitter. It is disconcerting  
21 when you ask the Army Corps of Engineers to come out and  
22 give you a determination, and they are on a sugarcane farm  
23 where they have rows, and they are low between, right, and  
24 that tells me that that is wetlands, jurisdictional. And,  
25 then another Army Corps of Engineers comes out to make a

1 determination and does not say it is. So, there is--you  
2 cannot plan to do developments and homes, et cetera, based  
3 on how this rule is written. You will have to hire a  
4 consultant. You will have to have the Corps come out and  
5 make a determination, and it delays everything--

6 Chairman Vitter. And, that determination--

7 Mr. Noel. --years.

8 Chairman Vitter. --could be different every time.

9 Mr. Noel. Absolutely, and it just--there is no way to  
10 run a small business not knowing what the rules are.

11 Chairman Vitter. Right.

12 Mrs. Maulsby. Senator, I would add, too, that timing  
13 is everything in agriculture, and if you do not have the  
14 answers you need, your pests can get out of control quickly,  
15 your crop can be torn out right from under you if things  
16 cannot happen in a timely manner.

17 Chairman Vitter. Sure.

18 Mrs. Maulsby. So, it is a very big issue.

19 Chairman Vitter. Okay. And, Ms. Milito, let me ask  
20 you. If an RFA process had been used, what could that have  
21 done positively in terms of avoiding some of these concerns?

22 Ms. Milito. I think the consideration of less costly  
23 alternatives is the most important thing that the RFA  
24 process does and can do, as Mr. Maresca hit on. Thank you.

25 Chairman Vitter. Okay. Thank you very much.

1 I will turn to Senator Shaheen.

2 Senator Shaheen. Thank you, Mr. Chairman, and thank  
3 you all very much for being here. Your testimony was very  
4 helpful.

5 And, Mr. Bulis, I did not know until we got your  
6 biography that you were a--you are a New Hampshire native,  
7 and I appreciate your talking about fly fishing in New  
8 Hampshire. We think we have some great spots to do that.  
9 And, obviously, the outdoor industry is a very big economic  
10 contributor, not just to New Hampshire and Montana, but to  
11 the entire country. And, so, making sure that we have clean  
12 water that benefits everyone is very important.

13 And, I am sure that all of you would agree with that.  
14 So, just to be clear, I do not assume that anybody here is  
15 suggesting that we should repeal the Clean Water Act. That  
16 is not what the concern is.

17 So, let me go back. I thought, Mr. Noel, you were very  
18 helpful in terms of talking about the kinds of rules that  
19 would be helpful in providing some certainty for small  
20 businesses. As we all know, this is a proposed rule. It  
21 has not been finalized yet. And, so, in thinking about not  
22 just the process that was followed--I appreciate the  
23 concerns that have been raised about that, and I share some  
24 of those--but also in terms of trying to do a final rule  
25 that would provide more certainty for businesses, more

1 understanding and clarity for businesses, would you talk a  
2 little bit more about that, Mr. Noel, and what you would  
3 like to see.

4 Mr. Noel. Certainly. You know, there was not very  
5 much clarity before.

6 Senator Shaheen. Right, which is part of the problem.

7 Mr. Noel. Which is part of the problem. And, in the  
8 effort to clarify, they have grossly expanded it to cover  
9 areas that were, in our estimation, not determined to be  
10 waters of the United States, certainly like roadside ditches  
11 or ponds, temporary ponds.

12 You know, with the work toward trying to come up with  
13 some very clear definitions, I mean, there was plant life,  
14 there was water on the soil, et cetera, that kind of led us  
15 in a direction to help do that. We thought they would be a  
16 little more specific for that as opposed to the rule that  
17 came out that said, basically, call us if you own a piece of  
18 land and we will tell you whether it is wetlands or not,  
19 based on whoever shows up that day.

20 They need to define it in a way that any citizen that  
21 reads the rule can walk out there and say, yes, this is  
22 definitely wetlands. Where I live, it is clear what  
23 wetlands look like because we are surrounded by them in New  
24 Orleans and the South Louisiana area. But, the roadside  
25 ditches, flood plains, which we are also dealing with an

1 Executive Order that expands the flood plains. And, so, it  
2 makes it very difficult to decide to buy a piece of land and  
3 develop when you have no idea what it is going to cost you  
4 to mitigate it, and the mitigation costs are not in the  
5 economic analysis, are significant.

6 Senator Shaheen. And, Ms. Milito, can you share your  
7 thoughts about what would be helpful to small businesses in  
8 looking at any final rule and how, short of repealing what  
9 is being proposed, what would be helpful to small businesses  
10 in providing clarity.

11 Ms. Milito. I think--Senator, thank you for the  
12 question, too, and going back to your point, too, about the  
13 Clean Water Act itself, yes, I am not here to say that  
14 members of NFIB do not like clean water. What they do not  
15 like, and what we do not like about this rule in particular,  
16 is the agencies', what I would say is kind of flagrant  
17 disregard for another law, another federal law, the  
18 Regulatory Flexibility Act, and what that law encompasses,  
19 and particularly the Small Business Advocacy Review Panel  
20 and the opportunity for the two agencies to hear from  
21 business owners, like Mr. Noel and like Mrs. Maulsby, in a  
22 very thoughtful and methodical way. So, not a big open  
23 forum where you have 100 business owners, but to hear  
24 specific, industry-specific things. So, to hear from the  
25 home builders with specific proposals.

1 Senator Shaheen. And, I am not debating the process--

2 Ms. Milito. Yes.

3 Senator Shaheen. --and how that worked. I am trying  
4 to get a better sense from you of what you would like to see  
5 in terms of a final rule that would provide more clarity for  
6 businesses.

7 Ms. Milito. And the jurisdictional issue, which NFIB  
8 addressed in a letter to the agency, too, which I would be  
9 very happy to provide the committee in addition to a  
10 separate letter we did on the RFA, I would be happy to do  
11 that, too. But, I will just--

12 Senator Shaheen. That would be very--

13 Ms. Milito. Yes, absolutely. That might be--

14 Senator Shaheen. --very appreciated, if you would--

15 Ms. Milito. Yes.

16 Senator Shaheen. --share that, and I am sure the  
17 Chairman will share that with the members.

18 Ms. Milito. Yes. Yes. Absolutely.

19 Chairman Vitter. Sure. Absolutely. Without  
20 objection.

21 [The information of Ms. Milito follows:]

22 / COMMITTEE INSERT

1 Ms. Milito. And, just going back, too, that we do  
2 feel, overall, there was an over-reach and going beyond what  
3 Congress intended with the Clean Water Act as far as what  
4 the agency's authority is.

5 Senator Shaheen. So, your objection is really the  
6 proposed rule. It is not that it does not provide clarity,  
7 it is more that you think it expands what is under existing  
8 law and that--

9 Ms. Milito. That is part of--

10 Senator Shaheen. --NFIB does not like that.

11 Ms. Milito. Our objection is partly with regards to  
12 the jurisdictional issue, but also with regards to the RFA  
13 analysis, or lack thereof, that was done by the agencies.

14 Senator Shaheen. Okay. Thank you.

15 Ms. Milito. Thank you.

16 Senator Shaheen. That is helpful.

17 And, Mr. Bulis, I am actually out of time, but I just  
18 wanted to give you the opportunity to comment. I assume--  
19 you talked very eloquently about the importance of our  
20 streams and rivers and to the outdoor industry. I assume  
21 that there are--we can continue to protect those waters and  
22 still come up with some rule that would do that, that could  
23 provide some clarity. Have you discussed that within your  
24 association and does that seem like something that is  
25 reasonable to expect?

1           Mr. Bulis. Yes. I mean, we have discussed it, and I  
2 think the biggest thing we need to come up with is a  
3 balance, is a fair balance, where the--you know, we do not  
4 put our environment at risk, but we also do not put small  
5 business at risk. I think that is the most important thing.

6           Senator Shaheen. That is a very good way to say it.  
7 Thank you. Thank you all.

8           Chairman Vitter. Thank you. Absolutely.

9           Senator Fischer.

10          Senator Fischer. Thank you, Mr. Chairman, and welcome  
11 to all of you. It is such a pleasure to have you here  
12 today.

13          Earlier this year, I was able to chair a field hearing  
14 in the State of Nebraska, in Lincoln, Nebraska, on waters of  
15 the U.S. and the impact on every Nebraskan that those  
16 proposed rules will have. We were very fortunate on one of  
17 the panels to have a home builder from the State of  
18 Nebraska, and he made a comment, Mr. Noel, that really  
19 brought this home to me, and, again, the impact that it has.

20          In Nebraska, we have a broad, broad coalition of  
21 organizations, of people who are very, very concerned about  
22 the impact of these regulations, and I always smile and say,  
23 as a rancher, it is the usual suspects, people in  
24 agriculture who have deep concerns, but it is also home  
25 builders. It is cities, it is counties, the cost to

1 taxpayers that these proposed rules are going to have. It  
2 is our natural resources districts, all of these folks have  
3 come together in opposition--in opposition to this  
4 overreach, I believe, by the federal government.

5 But, the home builders said that, right now, 25 percent  
6 of the current cost of a new home is due to current  
7 regulations. That puts an American dream out of reach for  
8 most Americans. You know, it is an American dream to  
9 purchase a home, and we already are looking at 25 percent of  
10 the cost being due to regulations. What is going to be the  
11 impact of these proposed rules and more and more and more  
12 coming down from the federal government?

13 Mr. Noel. Well, great question. We struggle now to  
14 get an entry home built for a first-time homebuyer because  
15 of the regulations that we deal with, and, you know, they  
16 come from a multitude of areas--local government, state  
17 government, and certainly federal government.

18 If any--if this rule was to go into effect and we had  
19 to spend additional money to get jurisdictional issues taken  
20 care of, it surely would put the first-time buyer out of  
21 reach of a single-family home because of the--

22 Senator Fischer. Yes. We are seeing more apartments  
23 built than homes.

24 Mr. Noel. Right.

25 Senator Fischer. You know, so we see the effect, I

1 think, of regulations right now. But, that, to me, was very  
2 telling.

3 Mr. Noel. Well, and home ownership has so many  
4 benefits to the community--

5 Senator Fischer. Yes.

6 Mr. Noel. --and to the American society, that to  
7 become a renter nation would not be what I think is in the  
8 best interest of the folks here.

9 Senator Fischer. I agree.

10 And, Mr. Bulis, when you talk about fly fishing, my  
11 brother was an avid fly fisherman. I am the Vice Chair of  
12 the Sportsman's Caucus here in the Senate. I happen to live  
13 in an area with pristine fly fishing, so it is not all in  
14 Montana or in New Hampshire. We have that in Nebraska, as  
15 well.

16 But, I believe that current regulations that we have in  
17 place seem to be doing the job. That is why we have these  
18 pristine areas. It has been said earlier, no one wants to  
19 change the strides that we have made under the Clean Water  
20 Act. I think what many of us are concerned about is just  
21 the overreach that we see here.

22 And, when you mentioned the comments that had been  
23 received by the EPA, about a million comments, 58 percent of  
24 those comments, the substantive comments that were made,  
25 were opposed to the rule, and that comes from the EPA's own

1 numbers. So, as people really drilled down on these  
2 proposed rules, they did have deep concerns with it.

3 But, I guess, I would ask you, do you believe it is  
4 necessary that we continue to have those partnerships  
5 between the states and the federal government when we look  
6 at water quality and our water resources? You know, the  
7 Nebraska Department of Environmental Quality implements EPA  
8 rules now. That is a responsibility we have. And, I would  
9 also note that the water in Nebraska belongs to the people  
10 of Nebraska. It is a state resource. It is not a federal  
11 resource. It is a state resource. And, I think we manage  
12 it well. We manage it responsibly. I have a concern about  
13 that partnership and what would happen in the future and I  
14 just would like your views on that.

15 Mr. Bulis. You have the concern with the federal  
16 government and the state partnership?

17 Senator Fischer. Yes. Yes. In the future, if the  
18 rules with waters of the U.S. go forward.

19 Mr. Bulis. I guess it is hard for me to comment on  
20 your particular state, but there are places across our  
21 country where we have some really bad water quality issues,  
22 Florida being one of them, from Lake Okeechobee discharges  
23 that are coming out of the Caloosahatchee and the Indian  
24 River lagoon, where we have members in those areas that,  
25 when the effluent water comes out of Lake Okeechobee, they

1 have these huge blooms of algae that form, and there are  
2 signs that go up, do not touch the fish, do not go in the  
3 water.

4 I mean, we have places in Chesapeake Bay where a large,  
5 or one of the contributing factors to the decline of striped  
6 bass is because of the forage fish that are not living in  
7 those areas anymore because of the water quality.

8 You know, in the Gulf Coast, there are places that are  
9 coming from the Mississippi River with the effluence that is  
10 coming off and creating dead zones.

11 So, I think that there is a real good--there has got to  
12 be a way that the states and the federal government work  
13 together to make sure that the water is the cleanest is  
14 possibly can be for our people and our environment and the  
15 businesses.

16 Senator Fischer. And I appreciated your comments about  
17 striking a balance. Obviously, I believe in a more limited  
18 federal government, and I believe that a balance is  
19 necessary, and especially for our small businesses and our  
20 taxpayers and the burdens that we are going to see on  
21 taxpayers with these regulations. So, thank you. Thank  
22 you--

23 Mr. Bulis. I agree with you, and I believe in the  
24 limited government reach, as well. I mean, in the State of  
25 Montana we had a reasonable and prudent speed limit, and now

1 that is gone because of government.

2 Senator Fischer. Thank you.

3 Chairman Vitter. Thank you all very much. We really  
4 appreciate your being here. We really appreciate your  
5 testimony.

6 As I mentioned, I will be following up on this issue  
7 with a resolution about the EPA and the Corps, in my  
8 opinion, flagrantly ignoring the Regulatory Flexibility Act.  
9 That Act is really important for small business. It is one  
10 of the core protections in the regulatory process for small  
11 business. It should be one of the things this committee is  
12 all about. So, following that law is really important. So,  
13 we will follow up on that.

14 And, with regard to the substance of this rule, I just  
15 have a big concern, as many of you do, that there was lack  
16 of clarity. So, the agencies clarified all of that  
17 completely from their point of view, because if the question  
18 is, in the future, do the agencies have jurisdiction, the  
19 answer is going to be yes. You do not have to finish the  
20 sentence. You do not have to go on. You do not have to  
21 provide any details. The answer is yes. And, then, they  
22 will decide when and how to exercise it. Obviously, that is  
23 not clarity for you all, and I share that concern.

24 Senator Shaheen, any closing thoughts?

25 Senator Shaheen. Just thank you all very much for

1 being here, and hopefully we will see a final rule that is  
2 proposed that strikes the balance that you suggested, Mr.  
3 Bulis, between protecting our water resources and making  
4 sure that small businesses are not adversely--too adversely  
5 affected. Thank you.

6 Chairman Vitter. Thank you very much.

7 With that, the hearing is adjourned.

8 [Whereupon, at 3:26 p.m., the committee was adjourned.]