

GOVERNMENT MATTERS

September 23, 2014

Vol. 2, No. 18

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Cooking the Books on the Costs of Rules

by Ronald White

As part of the ongoing national effort by some in the business community and their allies in Congress to attack standards and safeguards, a [report](#) released today by the National Association of Manufacturers (NAM) provides a wildly exaggerated and unreliable estimate for the cost of federal rules in 2012. The report, prepared by economists W. Mark Crain and Nicole V. Crain, uses similar, fatally flawed methodology as the Crains' discredited 2010 [report](#) on the cost of rules prepared for the Small Business Administration's Office of Advocacy.

The Office of Advocacy report was widely panned in reviews by the [Congressional Research Service](#) (CRS), the [Economic Policy Institute](#), and the [Center for Progressive Reform](#), among others. It was based on critically flawed methodology that estimated the 2008 cost of rules at \$1.75 trillion (in 2009 dollars). Then-Administrator of the Office of Information and Regulatory Affairs, Cass Sunstein, [dismissed the 2010 report](#) as "deeply flawed" and an "urban legend" in congressional

testimony, and even the Office of Advocacy backtracked from supporting the report, noting on its [website](#) that “certain theoretical estimates of costs have been presented publicly as verifiable facts.”

As was the case with the 2010 Crain and Crain study, the current report uses high-end estimates of the cost of environmental regulations provided by federal agencies and incorporates estimates of rules that date back decades. As the CRS critique of the original study noted, “Although the agency estimates were typically presented as low-to-high ranges, Crain and Crain used only the highest cost estimates in their report. The Office of Management and Budget has said that estimates of the costs and benefits of regulations issued more than 10 years earlier are of ‘questionable relevance.’”

Among other assumptions that distort the report results is the use of a 2014 NAM survey of manufacturers, which included estimates of their costs associated with “complying” with federal rules. Essentially, the report includes estimates of the costs to companies that were subject to federal agency enforcement for their failure to comply with rules that the vast majority of businesses meet. NAM’s own survey finds that almost 80 percent of businesses were not subject to any enforcement or compliance actions in the past year.

The report also incorporates estimates of the cost of purchasing equipment to comply with federal rules. However, there is no acknowledgment of the economic *benefits* to manufacturers of products such as environmental controls. For example, the Manufacturers of Emission Controls Association (MECA) estimated that in 2010, the economic activity that resulted from emission control technology for new cars and trucks in the U.S. totaled \$12 billion. Additionally, MECA member companies provided 65,000 green jobs in the U.S. The Institute of Clean Air Companies (ICAC) forecasts that the overall U.S. market for air pollution control and monitoring technology is around \$5 billion a year (2012 dollars) and is expected to increase to almost \$6 billion by 2016.

Another fundamental, underlying flaw in both the new report and the 2010 study is the omission of any consideration of the tremendous benefits to the public that result from environmental, workplace, transportation, and financial protections. As a result, the reader is left with a one-sided and distorted picture regarding how the costs of federal rules compare to their benefits.

A recent Center for Effective Government study, [*The Benefits of Public Protections: Ten Rules That Save Lives and Protect the Environment*](#), found that public health and safety, worker safety, and environmental benefits projected from just ten proposed or final rules issued by five federal agencies (the U.S. Environmental Protection Agency, Occupational Safety and Health Administration, National Highway Traffic Safety Administration, Food and Drug Administration, and Department of Agriculture’s Food Safety and Inspection Service) will save over 10,000 lives and prevent 300,000 cases of disease, illness, or injury each year. Even after considering their estimated costs, the net benefits from these ten rules will be between \$46 billion to \$122 billion per year. This represents just a small piece of the overall benefits that essential public protections provide to Americans.

This new industry report is another blatant attempt by the National Association of Manufacturers to recycle old and unproven complaints about the cost of federal rules based on a methodology designed to provide the desired outcome. Rather than providing a scholarly contribution to national discussions regarding the role of rules in our society, its only apparent purpose is to provide ammunition to those in Congress who wish to subvert our system of public protections to improve corporate bottom lines.

Counting the Costs of Carbon: White House Approach Bolstered by Investigative Report

by Katie Weatherford

Each ton of carbon pollution from cars, planes, and power plants comes with costs. It harms our environment and threatens our health, it drives climate change, and it negatively impacts our economy. The White House has attempted to develop a standard estimate of these costs, called the “social cost of carbon,” for agencies to use in analyzing the benefits of rules designed to reduce carbon emissions. In an Aug. 25 [report](#), the Government Accountability Office (GAO) validated that effort.

Calculating the Social Cost of Carbon

The GAO report, requested by Sen. David Vitter (R-LA) and several anti-regulatory allies, detailed the collaborative approach taken by a group of federal agencies to develop a government-wide estimate of the “social cost of carbon.” This is a monetized estimate of the damage caused by each ton of carbon pollution emitted into the air. By 2015, each ton of carbon [is expected](#) to cost \$37 in damage to the economy.

According to GAO, federal agencies began to include an estimate of the social cost of carbon in their cost-benefit assessments in 2008, in response to a [court decision](#) on the National Highway Traffic Safety Administration (NHTSA)’s 2006 fuel economy standards. The Ninth Circuit sent the rule back to NHTSA after finding that the agency erred when it decided not to monetize the benefit of reduced carbon emissions.

The following year, the GAO report explains, “in part to improve consistency in agencies’ use of social cost of carbon estimates,” the White House Office of Information and Regulatory Affairs (OIRA) and the Council of Economic Advisers convened an informal interagency working group on the social cost of carbon. The working group finalized an estimate in 2010 and agreed to review it as new information becomes available.

In May 2013, on the basis of new research, the working group [increased the social cost of carbon](#) to \$38 per metric ton of carbon dioxide. A month later, the Department of Energy (DOE) finalized energy efficiency standards for microwaves, which incorporated the new estimate into the regulatory impact analysis of the rule. In November 2013, OMB [announced](#) a slight revision to the estimate, “result[ing] in a central estimated value of the social cost of carbon in 2015 of \$37 per metric ton of carbon dioxide....”

Carbon Cost Estimates Cause Controversy

The inclusion of the May 2013 cost estimates in DOE’s final rule immediately raised concerns from all sides. Health and environmental advocates [argued](#) that the estimate was still too low because the working group overly discounted the cost of carbon emissions for future generations.

At the same time, Vitter and six other senators sent a [letter](#) to the U.S. Environmental Protection Agency (EPA), DOE, and the Office of Management and Budget (OMB) raising concerns with the

increased estimate, noting that these agencies will use it to justify new rules. The Vitter letter also contended that executive branch efforts on the issue lacked transparency and public input.

Findings Validate Executive Branch Approach

Contrary to Vitter's allegations, GAO found that the social cost of carbon working group made decisions by consensus only, relied primarily on existing studies, and publicly disclosed limitations and made revisions as new information became available.

According to GAO, the working group provided numerous opportunities for public input on the estimated social cost of carbon. In fact, the working group's decision to review the 2010 estimate was *largely in response to public comments* that participating agencies received. When OMB released its revised 2013 estimate, the office further addressed concerns about opportunities for public input by requesting comments on the revision.

GAO's report also debunked Vitter's transparency allegations. GAO found that the working group relied on three prevailing academic models on the economic effects of climate change, and both the 2010 and 2013 estimates of the social cost of carbon are consistent with those models. Moreover, GAO found that the working group took steps to disclose limitations on its estimates, highlight opportunities for additional research, and review the estimates as new information becomes available.

Conclusion

While many health and environmental organizations are hopeful that the working group takes steps to improve its estimates of the social cost of carbon in the future, they note that the 2013 updates are a critical first step. The availability of a government-wide estimate allows agencies to better assess the benefits of reducing carbon pollution as they develop standards to combat the global impacts of climate change.

Tracking Toxic Trains in California and Boosting Federal Safeguards

by Amanda Frank

The oil boom in North Dakota's Bakken region has led to more crude oil being transported by train throughout the country and, consequently, a rise in oil train accidents. On Aug. 29, California passed new legislation that would help emergency response officials prepare for potential disasters. The [legislation](#) would require rail companies to submit emergency response plans and inform officials about the movement of crude oil and other hazardous materials through the state. The bill dovetails with related federal efforts to boost rail safety.

Each day, around [700,000 barrels](#) of crude oil leave the Bakken region by rail, heading for refineries across the U.S. and Canada. [Bakken oil is especially volatile](#), and a train crash or derailment can cause an explosion. The most devastating example occurred last year in [Lac-Mégantic, Quebec](#), where an oil train derailed downtown, killed 47 residents, and severely damaged much of the city. Communities

along train routes have limited authority to regulate and communicate with rail companies that are moving oil through their towns.

In response to recent train accidents, the U.S. Department of Transportation (DOT) released an [emergency order](#) last May requiring railroad companies to notify state emergency response officials when they plan to move oil train cars through a state. This applies only to trains carrying Bakken crude in excess of 1 million gallons (approximately [35 train cars](#)).

California's legislation, if signed into law, would provide broader protections. The bill would apply to trains carrying more than 1 million gallons of *any* hazardous material (as defined by the [U.S. Secretary of the Treasury](#)), so it would include not only Bakken crude but other explosive and flammable substances. Moreover, it requires rail companies to create a "response management communications center" that state officials can contact in the event of an accident. This would enable emergency response officials to quickly gather information critical to disaster response.

California's law passed the State Assembly by a vote of 61-1, indicating that lawmakers on both sides of the aisle are committed to protecting communities from oil train accidents. The law now goes to Governor Jerry Brown for approval.

Despite these advances, the state is limited in what it can do to regulate rail companies. States cannot, for instance, [impose speed limits or prevent trains from passing through large urban areas](#). Such protections must come from federal standards set by the DOT, and the agency has been taking some action to tighten requirements and improve safety.

[Last month](#), DOT proposed two new rules for crude rail transportation. [One](#) focuses on strengthening safety standards, such as setting speed limits and improving tank car safety. [The other](#) would require companies to create emergency response plans for derailments.

In addition, local community members – not just emergency response officials – need access to emergency response information. DOT's rules should include provisions for making this information publicly available so residents can better prepare for oil train disasters and be actively involved in developing and improving plans.

The Center for Effective Government advised DOT to finalize and implement these rules as soon as possible to prevent future disasters. You can also weigh in by [submitting a comment](#) on DOT's proposed rules by Sept. 30.

Support Those Who Support Us: Let Your Dollar Be Your Vote for Responsible Corporate Taxpayers

Tax Rates Paid by Major Retailers, Restaurants, Banks, and Cable/Cell Providers

by **Scott Klinger**

Over the last month, American consumers have sent a strong message to companies thinking about abandoning the U.S. and moving offshore: if you stop supporting the U.S. by avoiding taxes, we'll stop supporting you and shop elsewhere.

The offshore move, known in policy circles as "corporate inversion," occurs when a large American business buys a smaller foreign firm, then trades in its U.S registration for the foreign papers of its merger partner. It is the latest tax-dodging strategy for companies that have grown up and prospered in America.

After incurring consumer outrage, including calls for a boycott, drug retailer Walgreens backed away from plans to move to Switzerland in order to slash its U.S. tax bill. Late last month, Burger King became the latest to suffer calls for boycotts after the nation's second-largest burger chain announced it would merge with Tim Horton's, a Canadian coffee and donut chain, and move its corporate registration to Canada.

For many years, consumers have been using information on corporate social responsibility to inform their purchase decisions, preferring companies that are more environmentally responsible, or those that avoid sweatshops and respect workers' rights.

But basing purchasing decisions on the taxes corporations pay is a new tool for engaged consumers and represents a new twist in the corporate tax debate. Corporate inversions are only the latest in a long series of strategies that corporations have used to take advantage of gaping loopholes in the tax code. Many corporations invest heavily in lobbying for loopholes and mining the tax code for deductions, credits, and other tax perks. All of this is legal, but that doesn't make it right.

While some companies have turned tax dodging into an art form, others pay their fair share toward the cost of operating the federal government. To help consumers interested in supporting corporations that are supporting their country, we offer the following list of effective corporate tax rates paid by retailers, restaurants, banks, and consumer products corporations.

	Current Federal Tax (\$ Millions)	U.S. Pre-Tax Income (\$ Millions)	Effective Tax Rate
Banks			
Sun Trust	-206	1,634	-12.6%
JP Morgan	-1,316	17,229	-7.6%

Citigroup	-260	6,397	-4.1%
PNC	117	5,568	2.1%
Wells Fargo	4,601	32,629	14.1%
Capital One	1,360	5,958	22.8%
U.S. Bancorp	1,885	7,764	24.3%
BB&T	1,004	3,124	32.1%
Drugstores			
Rite Aid	0	250	0.0%
Walgreens	1,122	3,477	32.3%
CVS	2,623	7,528	34.8%
Retailers			
Amazon.com	130	704	18.5%
Staples	193	881	21.9%
Costco	572	2,070	27.6%
Kroger	638	2,282	28.0%
Target	1,213	3,984	30.4%
Bed, Bath & Beyond	515	1,613	31.9%
Home Depot	2503	7,770	32.2%
Wal-Mart Stores	6,377	19,412	32.9%
Lowe's	1,342	3,673	36.5%
Macy's	859	2,290	37.5%
Best Buy	306	687	44.5%

Restaurants			
Wendy's	-2	50	-4.0%
Darden Restaurants*	40	189	21.2%
Burger King	30	127	23.6%
Starbucks	617	2,110	29.2%
Yum Brands**	159	464	34.3%
McDonalds	1,238	2,913	42.5%
Cell Phone Providers			
Verizon	-197	28,833	-0.7%
AT&T	3,043	27,777	11.0%
U.S. Cellular	180	258	69.8%
Sprint	1	-1,815	NMF
Cable TV Providers			
DISH Network	-163	1,128	-14.5%
Time Warner Cable	631	3,039	20.8%
DirecTV	911	3,509	26.0%
Comcast	3,183	10,590	30.1%

Current federal taxes paid and U.S. pre-tax income taken from tax footnote in each company's most recent annual report (Form 10-K) filed with the U.S. Securities and Exchange Commission. Data current as of Aug. 31, 2014. Starbucks pre-tax earnings excludes the effect of a litigation-related special charge.

*Darden's restaurants include: Olive Garden, LongHorn Steakhouse, Bahama Breeze, Season 52, Eddie V's, Yard House, and The Capital Grille.

**Yum Brand's restaurants include: KFC, Taco Bell, and Pizza Hut.

The Star-Spangled Banner is a Song Full of Questions

by Scott Klinger

Early on the morning of Sept. 14, I joined several hundred fellow citizens, along with guests from Canada and the United Kingdom, inside Fort McHenry in Baltimore. We huddled in the chilly morning air in the dawn's early light to remember the moment 200 years earlier when Francis Scott Key penned the first words of the poem that was to become our national anthem.

Key watched the 25-hour bombardment, part of the War of 1812, from a truce ship anchored about four miles from the fort. On Sept. 13, 1814, British war ships launched 200-pound bombs a mile into the air, which fell toward the fort and burst in air ten feet over the defender's heads. The rockets' red glare came from a new technology – rockets that screeched through the night sky, lighting it up. They were designed not to maim but to instill fear. From accounts left by those who fought, they did their job effectively.

The British ships fired their ceaseless barrage from two miles, a half mile beyond the reach of Fort McHenry's 24-pound cannons. One soldier in the fort wrote that "we were like pigeons tied by their legs to be shot at," yet they persevered.

Key and his two companions on the boat that evening were not the only ones watching the battle rage through the night. The people of Baltimore gathered on rooftops, as they had two weeks earlier to watch the distant red glow to the south as the British burned the U.S. Capitol, the White House, and most government buildings to the ground. What would be the fate of their city?, they wondered.

At seven o'clock the following morning, the first light of dawn broke and the shelling stopped. What did this mean? Had the British taken the fort? Key penned the first stanza of his poem, ending with the famous line: O say does that star-spangled banner yet wave, O'er the land of the free and the home of the brave? It was a real question, not a rhetorical one. It was directed toward his fellow Marylanders who watched in suspense along with him.

It had rained through the night, and the fort was flying its smaller, lighter storm flag. But by dawn, the storm had passed and blue skies blanketed the refreshing, smoke-free air. The storm flag was pulled down. Which flag would the people see next? Would it be Britain's Union Jack or the stars and stripes?

At 9:00 a.m., with a military band playing Yankee Doodle, the informal national anthem of the day, the larger garrison flag was hoisted. That flag, the one Key named the Star-Spangled Banner, made clear that the defenders of Baltimore had carried the day. The British departed, and the hostilities of the War of 1812 were over.

General Colin Powell spoke at Fort McHenry after the flag had been raised. He reminded guests that the history of our nation is a history of struggle toward a more perfect union. There have been many dark days when the future was anything but certain and when the question of whether the U.S. would remain the land of the free and the home of the brave was, for people of those times as it was for Key, an open question.

Key's poem and our national anthem has four verses. Most of us know the first stanza, which Key directed toward those who watched with him. The second stanza is about the flag itself, the third about war and all its troubling consequences, and the fourth stanza is about faith. It imbues the question of the first stanza with timelessness. It makes the question of whether the banner still waves, our question.

The people of Baltimore, like people throughout American history, struggled with divisions of class, race, religion, and political bent. Some were open supporters of the war that had suddenly arrived at their doorstep. Others, including Key, had opposed the war. But with the war front and center, those differences receded and they knew they were all in it together. When the flag was still there, they celebrated their perseverance more than the victory.

America has faced other dark days over the last two centuries: a Civil War at home and many wars on foreign fields, depressions, lynchings, segregation, floods and earthquakes and hurricanes, Dust Bowl-induced hunger, terrorists – both homegrown and external – and at every turn, we've been left to wonder whether life as we knew it was coming apart at the seams. We've faced a choice of giving up or, like differently colored broad stripes and differently shaped bright stars, coming together in one fabric of a people.

In the divisions among us that currently tear at our national fabric, can we, like our forbearers two hundred years ago, persevere through our own dark nights of partisan political paralysis, deepening economic inequality, and the deep wounds of racial strife? Will we succeed and awaken to a new day, when our flag is still there, proudly waving over a people who have come together to make our nation a better place for all?

That's our question to answer.

**The Defence of Fort McHenry, by Francis Scott Key
(Later renamed The Star-Spangled Banner, proclaimed the National Anthem of the
United States of America in 1931)**

O say can you see by the dawn's early light,
What so proudly we hailed at the twilight's last gleaming,
Whose broad stripes and bright stars through the perilous fight,
O'er the ramparts we watched, were so gallantly streaming?
And the rockets' red glare, the bombs bursting in air,
Gave proof through the night that our flag was still there;
O say does that star-spangled banner yet wave,
O'er the land of the free and the home of the brave?

On the shore dimly seen through the mists of the deep,
Where the foe's haughty host in dread silence reposes,
What is that which the breeze, o'er the towering steep,
As it fitfully blows, half conceals, half discloses?
Now it catches the gleam of the morning's first beam,
In full glory reflected now shines in the stream:
'Tis the star-spangled banner, O! long may it wave
O'er the land of the free and the home of the brave.

And where is that band who so vauntingly swore
That the havoc of war and the battle's confusion,
A home and a country, should leave us no more?
Their blood has washed out their foul footsteps' pollution.
No refuge could save the hireling and slave
From the terror of flight, or the gloom of the grave:
And the star-spangled banner in triumph doth wave,
O'er the land of the free and the home of the brave.

O thus be it ever, when freemen shall stand
Between their loved home and the war's desolation.
Blest with vict'ry and peace, may the Heav'n rescued land
Praise the Power that hath made and preserved us a nation!
Then conquer we must, when our cause it is just,
And this be our motto: "In God is our trust."
And the star-spangled banner in triumph shall wave
O'er the land of the free and the home of the brave!



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