

The impact of regulations on industry

By Kerin Clark

\$1.187 trillion dollars—the estimated cost of regulations in 2010. “This dollar amount is 8.3 percent of our nation’s Gross Domestic Product (GDP),” Attorney Kara Brighton told members of the Wyoming Farm Bureau Young Farmer & Rancher Committee. “It takes 34 days past Tax Freedom Day to pay for regulations, so you spend more than half the year working for taxes and regulatory costs.”

Looking at the cost alone shows the importance of becoming involved in the regulatory process. “People are willing to dedicate resources to legislative action, but we have found that once it goes to the regulatory process participation decreases,” Brighton stated. “Commenting is what we have for participation.”

Brighton pointed out the volume of legislative bills versus regulations. In 2010, Congress passed 125 bills. In 2010, agencies issued 3,503

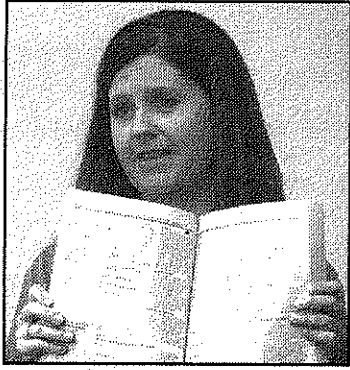
final rules.

Brighton and Harriet Hageman formed the Wyoming Conservation Alliance several years ago to promote Wyoming’s participation in the regulatory process. The Wyoming Farm Bureau Federation is a member of the Wyoming Conservation Alliance.

“We’ve had this company over three different administrations,” Brighton explained. “With the Obama administration regulations have increased by 50 percent. I’m not sure if that is a coincidence or intentional, I’m

just saying we are seeing a large increase in volume of regulations.”

“These are massive bureaucracies and even if you get a political change it will affect less than one percent of the people in that agency,” She continued. “The ones who write the rules and conduct public hearings are career bureaucrats that have a regulatory mindset. They are there to regulate and that is what



All in a day's work. Kara Brighton holds up a copy of the *Federal Register* showing one day's worth of proposed rules and regulations. *Kerin Clark photo.*

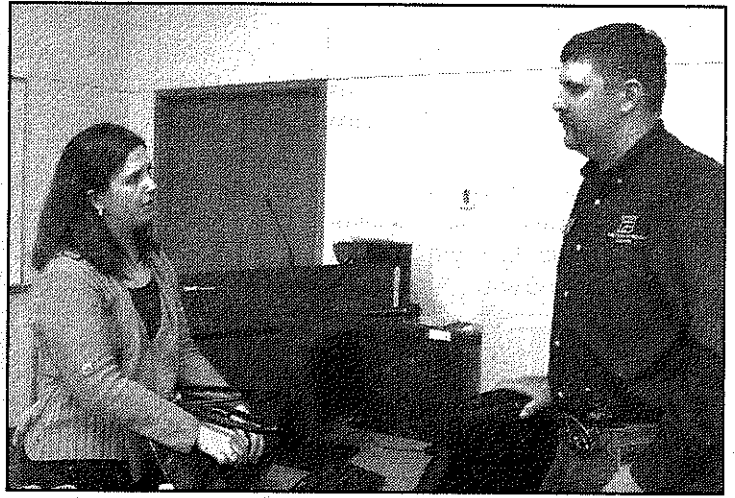
they do.”

Brighton emphasized it is critically important for agriculture to be involved in the regulatory process. “The costs associated with monitoring and participating in the regulatory process are simply another cost of business that agriculture must incorporate into its bottom line,” she said.

Congressional options

What can we do to get the agencies back in check? Brighton reviewed four congressional options: 1) Congressional Review Act, 2) amend current law, 3) introduce new legislation and 4) prevent funding.

“The Congressional Review Act is where Congress can come in with a joint resolution within 60 days of a final rule published in the *Federal Register*,” Brighton explained. “They can supersede the agencies final rule and if they do so the rule



Weston County rancher Chad Sears visits with Kara Brighton during the Wyoming Farm Bureau Young Farmer & Rancher Committee May meeting. *Kerin Clark photo.*

cannot become effective and the agency may not reissue the rule.”

According to Brighton, this is not the most effective option since it is difficult to get Congress to agree on a joint resolution.

“This option is rarely used,” She said. “The last time it was used was in 2001 for a Department of Labor ergonomics rule.”

The second option is to amend current law to try and modify the regulating agency’s authority.

The third option is to introduce

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new legislation and specifically identify issues and prescribe regulatory direction. “This has been more effective to delay action rather than block regulatory action,” Brighton stated. “It was used recently to delay EPA’s stationary source permitting for two years.”

The final option and most effective way to get agencies in check is to prevent funding. “As an example, the FY2010 interior appropriation

restricted use of EPA funds for certain climate change regulatory activities affecting livestock operations,” Brighton explained. “Not to say we are out of the woods on this issue, but the funding limitation was a positive move in the right direction.”

Regulatory Areas

Air, water, energy and chemicals are the main Environmental Protection Agency regulatory areas impacting agriculture. *See related article page 3.*

Challenging regulations

“Regulation and litigation are very closely linked,” Brighton concluded. “We have been successful in challenging regulations that used data based on old studies. We can be successful in litigation because we comment on the rules and can say we submitted comments and they didn’t act on the comments.”

The Wyoming Conservation Alliance maintains a monthly comment

calendar. “There is not a day that is blank,” Brighton said. “Some proposal affects Wyoming agriculture every day.”

“Part of your day needs to be spent working on regulations,” Brighton concluded. “Organizations like Farm Bureau spend the majority of their time working on regulatory issues.”

Kara Brighton is a partner in Hageman & Brighton, P.C., a law firm in Cheyenne. Brighton spoke to members of the Wyoming Farm Bureau Young Farmer & Rancher Committee at their May 4 meeting.