A current conservative refrain is the regulatory uncertainty is holding back the economy. Consider an editorial entitled “Obama’s regulatory flood is drowning economic growth”:

> Businesses large and small face more uncertainty today about the federal regulatory environment than at any point since the New Deal . . . . Seeing this tsunami of red tape flooding out of Washington, company owners and executives wisely opt to delay new hires and investments until they have a clearer idea how much their already huge compliance costs will increase and how the markets will be warped by changes mandated by the bureaucrats.

Of course, it sounds better to talk about “regulatory uncertainty” than just to say that businesses hate the idea that they’ll have to cut pollution or give more information to consumers. In any event, there’s so much wrong with the “uncertainty” argument that it’s hard to know where to begin. Here are ten fatal flaws:

1. **Wrong pattern of unemployment.** As Think Progress points out, unemployment is currently *lowest* in health care, extractive industries, and the financial sector — exactly the areas where there has been the most regulatory effort.
2. **Reverse effect of uncertainty.** If businesses were worried that future regulatory burdens were coming down the pike, they’d want to increase investments today in order to benefit from the current more lenient regulations — a point ably made by Greg Burliss.
3. **Wrong psychology.** A McClatchy survey of business owners don’t reveal evidence of anxiety about the regulatory climate.
4. **Inconsistent conduct.** Regulatory uncertainty is increased by the very political figures who are complaining about it, which makes it hard to believe they’re sincere. For instance, pledges to repeal health care reform and efforts to strike it down in court only make it harder for businesses to know what the rules are going to be in the future. The same is true of litigation against EPA’s climate change rules. (But this just confirms that it isn’t really *uncertainty* but the fear of future regulatory burdens that is really at issue here.)
5. **Bad history.** It is not, in fact, true that regulatory uncertainty is “the highest it has been since the New Deal.” Between 1970 and 1981, Congress passed the federal air and water pollution laws, OSHA, RCRA, the Endangered Species Act, and the Superfund law. No one knew just how these laws would be implemented. That’s at least as much uncertainty as businesses face today.
6. **Investment decisions are relative.** Suppose you’re a business, trying to decide

whether to put cash into T-bills or build a new factory. If regulatory uncertainty is a big drag on the economy, that drives down growth rates — which means that the T-bill rate is also going to go down. So the decision about which use of money is better may not be affected much by the macro effect (if any) of regulatory uncertainty on the economy.

7. ***Bush v. Gore* as a test case.** The 2000 election was super close. If regulatory uncertainty (or fear of future regulation) was a major economic force, GDP should have gone down in the fourth quarter of 2000 when the outcome of the election was too close to call, then up in the first quarter of 2001 when Bush took office. The opposite happened. The economy went up at an annual rate of 2.4% during the election but shrank at a 1% rate after Bush took office.
8. **Offsetting consumer behavior.** Let’s say, to take an extreme case, that car companies won’t build new plants because they’re afraid that in five years the government will require them to produce only electric cars. By the same token, consumers should accelerate their car purchases to take advantage of the chance to buy gasoline-driven cars while they still can. So sales should go up. Where’s the evidence for this?
9. **Wrong labor effects.** This is a similar argument. Regulatory uncertainty should, if the theory is right, cause companies to substitute away from capital-intensive projects toward labor-intensive projects. So employment should rise. Enough said.
10. **Lack of international evidence.** If Obama’s regulatory plans are a big drag on the economy, then the economy should be doing a lot better in countries that are not planning major regulatory initiatives. No evidence of that.

Given its obvious flaws, the whole “regulatory uncertainty” argument has the feel of something invented by some clever political operative rather than a sincere policy view.