



2040 S Street NW, Second Floor
Washington, DC 20009

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The Honorable Ron Johnson
Chairman
U.S. Senate
Homeland Security & Governmental Affairs Committee
Washington, DC 20510

The Honorable Thomas Carper
Ranking Member
U.S. Senate
Homeland Security & Governmental Affairs Committee
Washington, DC 20510

The Honorable James Lankford
Chairman
U.S. Senate
HSGAC Subcommittee
Regulatory Affairs & Federal Management
Washington, DC 20510

The Honorable Heidi Heitkamp
Ranking Member
U.S. Senate
HSGAC Subcommittee Regulatory Affairs &
Federal Management
Washington, DC 20510

Dear Senator Johnson, Senator Carper, Senator Lankford, and Senator Heitkamp:

Thank you for the opportunity to share our perspective on the federal government's regulatory system and to identify specific rules that merit further attention. The Center for Effective Government is a national policy organization that works to ensure that government operations are open and transparent, that our regulatory system protects people and the environment, and that public officials advance the interests and priorities of all Americans.

A critical function of our government is to protect us from preventable hazards and harms. We expect our government to keep contaminated food out of restaurants and supermarkets. We expect a safe and healthy workplace and fair wages for a hard day's work. We expect businesses to operate without polluting our air or water, destroying natural habitats, or violating the public trust. These are basic, fundamental tenets of our society that serve as a foundation from which we can pursue and achieve the American dream.

Because of our federal system of standards and safeguards, over the past 100 years, we have succeeded at reducing workplace fatalities, reducing air and water pollution, and ensuring our food is safe to eat. At the same time, we have encouraged American entrepreneurship and business innovation, and in turn created new jobs, produced broadly shared prosperity, and achieved some of the highest living standards in the world.

But continued progress is at risk. Duplicative and unnecessary procedural hurdles affixed to our regulatory process, as well as sharp cuts in agency budgets, have significantly impacted the ability of agencies to modernize existing safeguards to keep pace with new scientific or technological developments or to adopt new rules to address emerging risks. Adding more obstacles, analyses, and legal challenges to this process will further erode our regulatory system, putting the American public at risk of preventable injuries, illnesses, and deaths, leaving our planet to suffer from the impacts of an unstable climate, and crippling our economy.

We believe that an efficient and effective regulatory process is one that allows agencies to adopt safeguards that provide an *adequate level of protection* from hazards and harms *before an accident happens*. Delayed rules have real-world impacts—to public health, safety, and the environment, and to our national economy. But too often, our government acts only after a preventable tragedy has occurred—the global financial crisis, the chemical facility explosion in West, Texas, the General Motors auto recall, and exploding rail cars carrying crude oil are just a few recent examples.

Selected High-Priority Rules

Chemical Facility Safety

President Obama's Aug. 1, 2013 Executive Order (E.O.) 13650 on Chemical Facility Safety and Security directs federal agencies to modernize chemical plant safety and security policies in order to protect workers and communities. In issuing the E.O., President Obama made it clear that existing federal and state programs were not protecting the safety and security of the workers or community.

Existing programs have failed because none of the rules or safety standards require facilities to identify or adopt inherently safer technologies and systems. Instead, current programs are limited to "managing" or "mitigating" risks. Since the West, Texas chemical explosion tragedy that served as the impetus for the executive order, there have been over 355 chemical accidents resulting in 79 deaths and 1,500 hospitalizations.¹

In response to the executive order, the Chemical Facility Safety and Security Working Group co-chaired by the Environmental Protection Agency (EPA), Occupational Safety and Health Administration, and the Department of Homeland Security issued its report to the president, *Actions to Improve Chemical Facility Safety and Security – A Shared Commitment*.

Included in this report is a commitment by the EPA to initiate a regulatory process to modernize the EPA's Risk Management Program (RMP), which serves as a key federal program for addressing industrial facility risks, such as those posed by chemical facilities. However, the EPA's Risk Management Program (RMP) lacks fundamental requirements to protect public health and the environment from catastrophic chemical releases through common-sense prevention measures.

In July 2014, EPA initiated a lengthy process of soliciting public input on the improvements needed to strengthen the RMP program through a request for information. Among the key recommendations from more than 150 national and local organizations² was that the RMP be revised to require *all* chemical facilities to conduct and submit an alternatives assessment to determine the availability of safer available chemical processes and/or inherently safer technologies (IST), as well as a requirement that all RMP facilities adopt the use of safer chemicals and processes wherever feasible.

EPA intends to propose revisions to the RMP program by September 2015, and the Workgroup report contains a commitment to complete modifications of the RMP that may include specific safer alternative analysis and requirements for companies to document actions they've taken to implement feasible alternatives before the end of fiscal year 2016. Given the importance of making changes to the RMP that focus on the *prevention* of chemical facility accidents, it is imperative that EPA complete its rulemaking well before September 2016.

Ozone Air Quality Standard

The Clean Air Act of 1970 requires that EPA review and, where necessary, revise national ambient air quality standards at no more than five-year intervals. The national ambient air quality standard for ozone was last revised in 2008, from 80 parts per billion (ppb) to 75 ppb. However, this standard was above the 60 to 70 ppb level recommended by the agency's Clean Air Scientific Advisory Committee, which committee members said was necessary to adequately protect public health³.

In December 2014, the agency proposed to revise the ozone standard to a level of between 65 to 70 ppb while accepting comment on a standard set at 60 ppb. EPA estimates that meeting a revised ozone standard of between 65 and 70 parts ppb by 2025 would avoid between 880 to 3,100 premature deaths, 360 to 1,100 respiratory hospital admissions, 1,100 to

¹ Senator Barbara Boxer, Chemical Accidents since West, TX Explosion (April 17, 2013), December 11, 2014. Available at <https://www.documentcloud.org/documents/1380842-epw-12-11-14chemical-accidents-charts-v5.html>

² Comments submitted by 156 organizations in response to Federal Register Notice - Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Rule Modernization Under Executive Order 13650; Request for Information (July 31, 2014). Available at <https://www.documentcloud.org/documents/1350484-coalition-to-prevent-chemical-disasters-rfi.html>

³ Letter from U.S. EPA Clean Air Scientific Advisory Committee Chair H. Christopher Frey to U.S. EPA Administrator Gina McCarthy, June 26, 2014. Available at [http://yosemite.epa.gov/sab/sabproduct.nsf/5EFA320CCAD326E885257D030071531C/\\$File/EPA-CASAC-14-004+unsigned.pdf](http://yosemite.epa.gov/sab/sabproduct.nsf/5EFA320CCAD326E885257D030071531C/$File/EPA-CASAC-14-004+unsigned.pdf)

3,500 emergency department visits for asthma attacks, and 300,000 to 910,000 asthma exacerbations in children, among other benefits, each year. EPA estimates the economic benefit from the avoided health effects at between \$2 billion and \$11 billion annually.

However, as medical and public health organizations such as the American Thoracic Society and the National Association of County and City Health Officials have noted,⁴ a significant body of scientific evidence indicates that a revised ozone standard of 60 ppb is necessary to protect public health. Compared to the current ozone standard, attaining the more health-protective 60 ppb standard would avoid up to 5,800 premature deaths, 2,100 respiratory hospital admissions, 6,600 emergency department visits for asthma attacks, and 1.7 million asthma exacerbations in children, among other benefits, each year. EPA estimates the economic benefit from these avoided health effects at between \$12 billion and \$20 billion annually.

All of the above estimates of avoided health impacts and economic benefits from a revised ozone standard exclude the substantial avoided health impacts in California, which would meet these standards after 2025, and do not include their economic benefits.

To ensure that the American public, and in particular vulnerable populations such as children, the elderly, and those with lung and heart disease, receive adequate protection from breathing unhealthy levels of ozone pollution, it is imperative that EPA adopt a revised ozone standard of 60 ppb.

Crude-by-Rail Standards

As a result of the rapid expansion in domestic oil extraction, the volume of train traffic carrying crude oil has increased by 4,000 percent over the past five years. Unfortunately, this has resulted in a significant surge in oil train accidents over the same time period, rising from nine incidents in 2010 to 144 incidents in 2014.⁵ While the majority of these incidents have not resulted in massive tragedy, the destruction of much of the town of Lac-Mégantic, Quebec in 2013, which killed 47 people, exemplifies the potential devastation that could occur from crude oil train accidents in highly populated areas.

In response to this increasing threat to public safety, the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the Federal Railroad Administration (FRA) proposed rules in August 2014 to improve crude oil train safety and finalized them on May 1, 2015. However, the rules do not address the issue of the volatility of transported crude oil, and they allow unsafe train cars to remain in service for an extended period. It is imperative that these regulations be strengthened to address these additional requirements and ensure that a major national tragedy related to oil train transport does not occur in the United States.

OSHA's Silica Rule

Overwhelming scientific evidence indicates that exposure to silica causes silicosis, chronic obstructive pulmonary disease, lung cancer, chronic kidney disease, and autoimmune disorders. In 1974, the National Institute for Occupational Safety and Health (NIOSH) issued criteria for a recommended standard limiting occupational exposure for all forms of crystalline silica to a level of 50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). The NIOSH criteria prompted OSHA to begin developing a rule shortly thereafter, but over forty years later, OSHA has yet to complete a rulemaking to revise the permissible exposure limit from 100 $\mu\text{g}/\text{m}^3$ to the NIOSH-recommended 50 $\mu\text{g}/\text{m}^3$ level.

Adopting this revised standard would prevent more than 350 deaths and 630 illnesses annually. OSHA has estimated the value of these avoided deaths and illness at \$1.7 to \$2.5 billion, with compliance costs of \$339 to \$351 million, resulting in an annual net benefit of \$1.3 to \$2.2 billion.⁶

It is imperative that OSHA expedite completion of the revised permissible exposure limit for silica to ensure that workers exposed to this dangerous hazard receive the necessary protections to safeguard their lives and their health.

⁴ Multiple group letter to H. Christopher Frey, Ph.D., May 19, 2014. Available at <http://www.lung.org/get-involved/advocate/advocacy-documents/health-medical-org-letter-casac-o3-naaqs.pdf>

⁵ U.S. Department of Transportation, Pipeline and Hazardous Material Safety Administration, Yearly Incident Summary Reports. Available at <https://hip.phmsa.dot.gov/analyticsSOAP/saw.dll?Dashboard>

⁶ Occupational Safety and Health Administration, Proposed Rule: Occupational Exposure to Respirable Crystalline Silica, 78 FR 56274, Table SI-2.

Causes of Regulatory Delay

In our view, our federal regulatory system has become slow, complex, and opaque as a consequence of unnecessary procedural hurdles being added to the process, continual cuts to agencies' budgets, and a fundamental misunderstanding about the role of regulations in promoting a sustainable and competitive economy.

OIRA Delays and Lack of Transparency

Under Executive Order (E.O.) 12866, many executive branch agencies must submit drafts of “economically significant” rules (rules that will have an annual economic impact of \$100 million or more) to the Office of Information and Regulatory Affairs (OIRA) within the White House Office of Management and Budget (OMB) for review. OIRA reviews the agency's analyses, including any cost-benefit analyses and impact analysis the agency has conducted, to determine if the office believes the rule should be proposed and/or adopted as written.

The E.O. provides OIRA with discretion to determine which rules qualify as “significant.” This has resulted in an unwieldy and inappropriately broad assertion of OIRA review authority to agency guidance documents and pre-rulemaking actions.

OIRA also has a poor record of following the deadlines or transparency requirements of the executive order. The E.O. requires that OIRA's review be completed within 90 days unless the agency agrees to a one-time extension of an additional 30 days. If OIRA makes changes to the proposed rule during the review process, the agency is supposed to identify those changes in a clear and understandable manner and make this information available to the public. If OIRA sends a rule back to an agency for further analysis, the office is required to explain in writing why more analysis is needed. But OIRA has earned a reputation for blocking rules indefinitely without giving the affected agency or the public any explanation of its reasons for doing so. The pattern is for rules to emerge from the OIRA review process significantly changed, almost always with weaker public protections as a result.

To address these concerns and improve the effectiveness and efficiency of our regulatory system, Congress should raise the economic threshold of \$100 million for defining “economically significant” rules, which has not been updated since 1978. Congress should also prohibit OIRA from reviewing agency guidance documents, pre-rulemaking actions, and other non-economically significant actions. OIRA should not be allowed to exceed the 90- or 120-day deadline set in the executive order. Failure to meet the deadline should be considered default approval of a rule. OIRA should also be required to provide copies of pre- and post- review versions of the rule in the rulemaking docket with a description of all substantive changes made by the office or any other person or agency.

Moreover, OIRA has forced agencies to use significant amounts of their time and resources conducting “regulatory lookbacks.” This contributes to delay by taking resources away from agencies efforts to complete rulemakings and to identify and investigate emerging risks to our health, safety, and environment. In practice, identifying and removing outdated and inefficient regulations is sensible, but in reality, the savings to the economy have been relatively modest at best (OIRA Administrator Howard Shelanski has estimated \$10 billion⁷). And the opportunity costs to the agency and to public health are unmeasured. Since the primary mission of regulatory agencies is to evaluate and protect against potential risks to the American people, the economy, and the environment, agencies should not be forced to engage in resource-intensive backward exercises in paring back outdated rules when they need to be scanning for emerging threats.

Regulations and the Economy

Our federal regulatory system bolsters the voice of big businesses and unreasonably elevates industry concerns about regulatory costs over imminent risks to our health, safety, and environment. Much of this dynamic of costs vs. benefits rests on the incorrect belief that regulations are bad for business.

Regulations ensure that a business or industry that creates a hazard bears the cost of controlling it. Without strong, enforceable regulations, companies may choose to forego investments in cleaner equipment and instead choose to use

⁷ OIRA Administrator Howard Shelanski, Oral testimony before the Senate Committee on Government Affairs and Homeland Security Committee, Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce, March 11, 2014.

equipment that pollutes more but costs much less. In this way, a company can pass the cost of its pollution on to the public—who pays through higher incidences of sickness, injuries, and even death.

Trade associations and corporate lobbyists often cloak their anti-regulatory arguments in discussions of the purported “burdens” they would impose on small businesses. We too are concerned about *real* small businesses and family farmers but believe the problems they face have more to do with industry consolidation and unfair competition from large producers—not from health and safety standards.

Small business owners are also parents, homeowners, consumers, and concerned neighbors who want their families protected from environmental contamination, contaminated foods, and unsafe toys, just like other Americans. Research shows actual small business owners support energy and climate legislation, and many believe such legislation would aid their businesses. One poll found 86 percent of small business owners believe “some government regulations are necessary for a modern economy,” and 78 percent believe “regulations are important to level the playing field with big business.”⁸

We urge Congress to reinvigorate antitrust and competition policy. Agribusiness monopolies are particularly damaging. Oligopolistic control over seed markets increase farmer costs and threaten biodiversity. Small livestock and poultry farmers are increasingly unable to sell to competitive markets and instead work as *de facto* contract workers for giant packers and processors.

The Small Business Regulatory Enforcement Fairness Act could be amended to require agencies to conduct more outreach, education, and compliance assistance to small businesses. Many agencies already have existing Small Business Ombudsman offices that help small businesses with compliance issues once regulations are issued. But legislation could encourage (and fund) these offices to proactively reach out to and educate small businesses about how they can comply with rules more efficiently. With a proactive approach, real small businesses would receive direct and tangible assistance to help them comply with regulations and profit from the health and safety benefits of regulations.

Resource Constraints

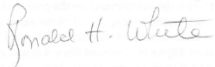
Regulatory delay is also caused by Congress continuing to cut agency resources. In fact, over the past decade, most agency budgets have barely held even. For example, OSHA’s enforcement budget today is at the level it was in 1981, even though the number of workplaces it is supposed to oversee has doubled. Funding in recent years for the EPA’s compliance and enforcement efforts, which support the majority of inspections and enforcement to ensure compliance with major environmental laws, have been at historical low levels.

Declining resources put pressure on agencies' ability to issue adequate protections in a timely manner and make it impossible for agencies to respond to known hazards, as well as emerging risks. Resource constraints also make it difficult for agencies to offer businesses training or compliance assistance with regulations that are on the books. An efficient and effective regulatory process is impossible without adequate funding and resources.

Conclusion

In considering improvements to the nation’s regulatory process, we urge the committee to recognize that the current complex process results in extensive delay in providing essential public protections. These delays result in significant costs to the American public in terms of lives lost and additional illness. The benefits to public health and welfare from public protections are often difficult to quantify and are therefore frequently underestimated while costs associated with their implementation are often overestimated. Proposals that result in additional requirements and procedural hurdles for agencies involved in rulemaking will only result in further delays that divert agencies from their important efforts.

Sincerely,



Ronald White

Director of Regulatory Policy

⁸ American Sustainable Business Council, Opinion Survey: Small Business Owners’ Opinions on Regulations and Job Creation, February 1, 2012. Available at http://asbcouncil.org/sites/default/files/files/Regulations_Poll_Report_FINAL.pdf