



March 3, 2015

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

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

Markup of the Small Business Paperwork Relief Act of 2015 (S. 86)

Dear Senator Johnson and Senator Carper:

The Coalition for Sensible Safeguards, which represents more than 150 labor, environmental, public health, scientific, consumer, financial reform, small-business, and public interest organizations, strongly opposes S.86, the “Small Business Paperwork Relief Act.” S.86 will be considered by the Senate Homeland Security Governmental Affairs Committee this Wednesday.

This bill won’t reduce paperwork or reporting requirements for small businesses. Rather it rewards those businesses that fail to follow the rules, and places law-abiding businesses at a disadvantage. In particular, the bill could encourage more violations since scofflaw businesses would know they could avoid certain reporting requirements — without fear of fine — until they are caught for the first time.

Even more disturbing, it would make it far more difficult for agencies to protect public health and safety. This bill would require agencies to excuse businesses that fail to comply with “a requirement regarding collection of information” from fines for first-time offenses. But this doesn’t apply only to reporting requirements. Under the Paperwork Reduction Act (PRA), “information collection requirements” also apply to substantive regulatory requirements that result in any record or report being created. While S. 86 would permit agencies to fine companies when the failure “has a potential to cause serious harm to the public interest,” there often would be no way for agencies to determine whether the violation signified a public threat.

Regulations that impose reporting or information-disclosure requirements are crucial to agencies’ ability to protect public health and safety. They include requirements for warning labels on toxic chemicals, monitoring and medical exams for asbestos and other toxic chemical exposures, and escape and evacuation plans for mine safety. Indeed, under the bill, many of the violations cited in the 2013 West, Texas fertilizer plant explosion that killed 15 people would be subject to the penalty exemption because the regulations are covered by the PRA, including the regulation for the storage of anhydrous ammonia.

When these reports and disclosures are delayed, public health and safety can be significantly

compromised, and agencies won't have the tools to be able to fine companies where non-compliance signifies the absence of a required public protection.

Similarly, this bill would permit agencies to impose fines when there is evidence of a danger to public health and safety, only if it gave a business 24 hours to comply. That is far too long if there is a chemical disaster or other imminent public health threat that requires more information immediately, not a day later.

The bill would:

- Do nothing to help well-intentioned businesses. Currently, agencies almost always waive fines for first-time violators of information collection requirements and give time to those acting in good faith to correct mistakes.
- Define a "small business" so broadly that it will include nearly all businesses, including oil refineries that employ up to 1,500 workers, chemical plants with a workforce of 1,000, or coal mines that employ several hundred miners.
- Stipulate that one agency cannot take into consideration violations at any other agency when exercising leniency. Non-compliance with an Occupational Safety and Health Administration reporting or disclosure requirement could get a reprieve from a first-time violation, even if the company also was failing to report other data to the Department of Agriculture or the Food and Drug Administration.
- Fail to exempt non-compliance that would jeopardize public health and safety, despite what the bill's language purports to do. Reporting information is the way that agencies assess whether a business is protecting public health and safety. For example, if a company fails to report whether it has an emergency response plan under the Emergency Planning and Community Right-to-Know Act, how is the Environmental Protection Agency (EPA) supposed to determine whether that failure to report threatens public health and safety? Is this a failure to prepare a plan, or a failure to report the existence of a plan?
- Encourage businesses to ignore the law by automatically granting a free pass for any first-time violation of a reporting or disclosure requirement in nearly any circumstance. Without the deterrent effect of a fine, businesses could simply ignore these requirements until they are caught for the first time.
- Have the perverse effect of putting law-abiding businesses at a competitive disadvantage while denying the public necessary information regarding potential threats to the public health, safety, civil rights, and the environment.
- Not reduce any regulatory burdens on legitimate small businesses. In particular, it would do nothing to help small businesses to comply with the reporting or disclosure

requirements at issue or with any other requirements to which those businesses may be subject.

There are real consequences to delaying reporting:

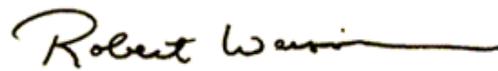
- Firefighters rely on businesses to report on hazardous chemicals under the Emergency Planning and Community Right-to-Know Act, so that they can respond to a possible chemical fire safely and effectively. A guarantee of immunity could lead to less disclosure of hazardous chemicals, putting firefighters at risk.
- Under the Employee Retirement Income Security Act (ERISA), pension administrators must file an annual report on the details of their pension fund. If an administrator was mishandling funds, under S. 86 he or she could just neglect to submit the annual report, covering up the misdeed with full knowledge that no fine could be levied for not submitting the report.
- EPA relies on self-monitoring and reporting under the Clean Water Act and the Safe Drinking Water Act, so that it can head off any potential danger to our water supply. Without reliable reporting, water quality cannot be assured; EPA cannot possibly be expected to inspect all of our 200,000 public water systems itself.

We strongly urge you to oppose S. 86, the Small Business Paperwork Relief Act.

Sincerely



Katherine McFate, President and CEO
Center for Effective Government
Co-chair, Coalition for Sensible Safeguards



Robert Weissman, President
Public Citizen
Co-chair, Coalition for Sensible Safeguards

The Coalition for Sensible Safeguards is an alliance of consumer, labor, scientific, research, good government, faith, community, health, environmental, and public interest groups, as well as concerned individuals, joined in the belief that our country's system of regulatory safeguards provides a stable framework that secures our quality of life and paves the way for a sound economy that benefits us all.