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May 1, 2015

The Honorable Ron Johnson
Chairman
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 Thomas Carper
Ranking Member
U.S. Senate
Homeland Security & Governmental
Affairs Committee
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 Public Citizen's views and concerns with the regulatory process and those existing and proposed regulations that we believe are beneficial to our organization's members as well as the consumers and the public more broadly. For more than 40 years, Public Citizen has successfully advocated for stronger health, safety, consumer protection and other rules, as well as for a robust regulatory system that curtails corporate wrongdoing and advances the public interest.

We agree with the Committee's goal of "an efficient and effective regulatory process that allows input by those affected by that process." The first step to realizing that goal is recognizing that regulatory paralysis is the most important problem currently facing our regulatory process. The regulatory process is simply too inefficient and ineffective in developing and finalizing new standards to protect the public's health, safety, and financial security. Examples of regulatory delay and inaction abound across agencies and across regulatory programs.

One of the most striking recent examples of regulatory delay has been the ongoing implementation of the Dodd-Frank Wall Street Consumer Protection Act ("Dodd-Frank"). According to current figures compiled by the law firm Davis Polk, about 60% of the required rulemakings under Dodd-Frank have been finalized and an astonishing 22% of required rulemakings have yet to be even proposed. This is far from the model of regulatory efficiency that Congress and the public expects of our financial agencies in

response to one of the greatest economic collapses our country has seen. At the Securities and Exchange Commission (SEC), the pace of rulemaking has been unacceptably lethargic, as a Public Citizen report from last year demonstrates. Our report found that of the 23 rules the SEC expected to finalize in 2014, the agency ended up delaying finalization of 13 of those rules.¹

Regulatory inefficiency also plagues the Occupational Safety and Health Administration (OSHA), the primary agency charged with protecting the health and safety of American workers. A report released this week by the AFL-CIO² finds that about 150 workers are killed every day due to injuries or illnesses caused by unsafe workplace conditions. Yet, according to a GAO report last year, it takes OSHA on average seven years to develop and finalize new health and safety standards.³ GAO found that the primary culprits for the slow pace of rulemaking were the elaborate and extensive rulemaking procedures OSHA is obligated to follow, including conducting in-person hearings, and a less deferential judicial review standard where OSHA rules are subject to more intensive judicial scrutiny under the “substantial evidence” standard.

Implementation of the bipartisan Food Safety Modernization Act (FSMA), passed in the wake of a string of food safety scandals in 2010 that sickened consumers, fatally in some instances, around the country, is another tragic example of regulatory delay. Despite Congress directing the Food and Drug Administration (FDA) to finalize the critical new food safety rules in seven key areas by 2012, all of those rules missed this mandated Congressional deadline and none have even been finalized to date.

As members of the Subcommittee on Regulatory Affairs and Federal Management heard from the witness testimony of Pam Gilbert, former Executive Director of the Consumer Product Safety Commission (CPSC), the agency primarily charged with protecting consumers from dangerous products must comply with numerous mandatory rulemaking procedures under its authorizing statute. In turn, this has led to a glacially slow pace of rulemaking at the CPSC. In its 30 year history, the agency has produced only a total of 9 consumer product safety standards under the lengthy rulemaking process required under the Consumer Product Safety Act. According to a GAO report from last year,⁴ resource intensive cost-benefit analyses of proposed and alternative regulations were identified as a major source of delay. By contrast, when the CPSC has been authorized by Congress to bypass cost-benefit analysis and other burdensome rulemaking procedures, the CPSC has been able to act quickly and effectively in protecting the public, and particularly infants and children, from unsafe products and toys.

One final, very timely, example of regulatory delay should be alarming to members of the Committee. Almost 5 years after the dramatic and tragic British Petroleum oil spill in the Gulf of Mexico caused by an explosion at an off-shore oil rig, the Department of Interior (DOI) this month finally issued a *proposed* rule enhancing the safety of so-called “blowout preventers” whose failure was one of the primary causes of the oil rig explosion. That it took the DOI almost 5 years after one of the worst environmental

¹ <http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=4229>

² <http://www.aflcio.org/content/download/154671/3868441/DOTJ2015Finalnobug.pdf>

³ *Workplace Safety and Health: Multiple Challenges Lengthen OSHA's Standard Setting: Hearing Before the S. Comm. on Health, Education, Labor, and Pensions*, 113th Cong. (2012) (statement of Revae Moran, Director, Education, Workforce, and Income Security).

⁴ <http://www.gao.gov/assets/670/666488.pdf>

disasters in our country's history to issue this rule, with even more delay until the rule is finalized, is truly an indictment of the unacceptable delays and paralysis that plague our regulatory process.

The foregoing examples are simply illustrative and do not represent an exhaustive list of delayed rulemakings. Public Citizen strongly believes that in many instances, our regulatory process works in neither an efficient nor effective manner. The result is too many dangerous products on the market; too many consumer rip-offs; too many environmental disasters; too many workers injured or killed; too many instances of food poisoning; and much more. The solution is not to layer on further procedural and analytical requirements or to task agencies with work, such as identifying and repealing old rules, that distracts them from their primary mission of developing new safeguards, and certainly if those additional duties are not accompanied with commensurate resources.

Public Citizen's 400,000 members and supporters come from many different backgrounds and reflect the diversity of our organization's interests. Our members include consumers, working families, business owners and professionals, academics, and retirees. The breadth of our organization's engagement on issues requiring government action or government reform mirrors the breadth of our membership. With respect to existing or proposed regulatory standards, Public Citizen supports a wide array of new regulations that are urgently needed to address areas in which a lack of regulation endangers our members and the public, as well as updates to existing regulations that are too weak to adequately protect our members and the public. The following is a selective list of pending regulations that Public Citizen believes will directly benefit not only our members, but the broader public as well, and which Public Citizen supports strongly:

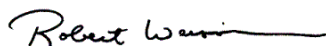
- **“Climate Action Plan” regulations to reduce carbon emissions:** climate change is one of the greatest threats to our public and the environment. Rising carbon emissions are already having a harmful impact on our climate and, left unchecked, will result in irreversible damage to our planet. Public Citizen strongly supports the Environmental Protection Agency's (EPA) proposed regulations to curb carbon emissions from new and existing power plants. In comments submitted to the EPA,⁵ Public Citizen identified ways in which the climate regulations would directly benefit consumers and offered constructive suggestions to increase those benefits to consumers, the public, and the environment, by making the rules even stronger and more effective.
- **Dodd-Frank Wall Street Reforms:** While financial agencies have put in place many important reforms of the financial industry in the wake of the 2008 financial collapse, others have languished almost 5 years after passage of Dodd-Frank. Public Citizen supports finalization of the long overdue Dodd-Frank rules, including disclosure of executive-compensation-to-median-pay ratios and tying such compensation to performance metrics, and protections for consumers against abuses from payday lenders.
- **E-Cigarette Regulations:** The Food and Drug Administration (FDA) is currently developing regulations to subject unregulated tobacco products, including electronic cigarettes, to common-sense restrictions and controls. Electronic cigarette use among minors is skyrocketing and the FDA must act quickly to prohibit the sale and marketing of electronic cigarettes to minors along with ensuring that the potential significant health risks of electronic cigarettes are studied and made clear to consumers.

⁵ <http://www.citizen.org/pressroom/pressroomredirect.cfm?ID=4340>

- **Oil Train Safety Standards:** The Department of Transportation (DOT) is finalizing new safety standards to enhance the safety of oil trains carrying highly volatile crude oil. Use of the rails to transport crude oil has skyrocketed over the last few years, and safety standards have not kept pace as recent derailments and explosions in communities across the country have tragically shown. DOT must act to ensure that tank cars carrying crude oil are as structurally sound as possible, that train braking systems are enhanced, and the volatility of the crude oil itself is reduced. All of these measures must be phased in as quickly as practicable to avoid future oil train explosions that place communities along oil train routes in danger.
- **Service Member Protections from Predatory Lending:** The Department of Defense (DoD) has proposed updates to existing rules that insufficiently protected active military service members from abuse by predatory lenders. These updates are critical in fixing loopholes that continue to allow unscrupulous lenders to prey on service members, undermining their economic security and our country's national security by harming force readiness.
- **New Workplace Safety Protections:** OSHA is developing new protections and updating outdated standards for workers in several key areas. Public Citizen supports finalization of OSHA's proposed standard reducing worker exposure to known carcinogens such as respirable silica, which leads to black lung disease, and beryllium. Public Citizen also supports increased disclosure to the public of reporting requirements regarding the numbers of injuries and illnesses that workers suffer at worksites.
- **Protecting Retirement Security of Americans:** the Department of Labor (DOL) has proposed important new conflict-of-interest restrictions for brokers who offer investment advice to retirees. Public Citizen supports this measure that is designed to make sure that investment brokers are acting in the best interest of their clients, rather than their own self-interest. This rule puts money back into the pockets of consumers, particularly retirees, instead of ending up in the pockets of brokers and banks as fees.
- **Generic Labeling of Drugs:** FDA has proposed a new rule that properly addresses significant regulatory gaps in the FDA's current generic drug labeling regulations, which allow a generic drug manufacturer to maintain a label even if it knows that label to be inaccurate and out-of-date. Public Citizen supports finalization of this rule to close a loophole that is a direct threat to patient safety.

Once again, Public Citizen thanks the committee for the opportunity to share our views on improving the regulatory process to make it more effective and efficient along with existing and proposed rules that Public Citizen supports as directly beneficial to our members and the broader public. We look forward to working with the Committee to improve both the regulatory process and specific regulations of importance to Public Citizen.

Sincerely



President,

Public Citizen

