TIME TAKES ITS TOLL: DELAY IN OSHA'S STANDARD SETTING PROCESS AND THE IMPACT ON WORKER SAFETY

BEFORE THE

COMMITTEE ON HEALTH, EDUCATION, LABOR & PENSIONS

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TESTIMONY OF

RANDY S. RABINOWITZ

DIRECTOR OF REGULATORY POLICY

OMB WATCH

1742 Connecticut Ave. NW
Washington, DC 20009

tel: 202.234.8494
fax: 202-234.8584

email: ombwatch@ombwatch.org
web: http://www.ombwatch.org

Mr. Chairman and members of the Committee:

Thank you for the opportunity to testify on delays in standard setting at the Occupational Safety and Health Administration (OSHA). My name is Randy Rabinowitz, Director of Regulatory Policy at OMB Watch, an independent, nonpartisan organization that promotes open, accountable government and health and safety standards that protect people and the environment. OMB Watch has monitored the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA), OSHA, and their interactions for more than 25 years. We co-chair the Coalition for Sensible (CSS), an alliance of more than 75 consumer, small business, labor, scientific, research, good government, faith, community, health, and environmental organizations joined in the belief that our system of regulatory safeguards is essential to maintaining our quality of life and building a sustainable economy that works for all. Time constraints prevented the coalition from reviewing my testimony in advance, and today I speak only on behalf of OMB Watch.

I am a nationally recognized expert on OSHA standard setting. I have served as co-chair of the American Bar Association's (ABA) OSH Law Committee; as the Editor-in-Chief of the ABA's treatise on OSHA Law and author of the section on standard-setting; and as an adjunct professor teaching OSHA law. I have been lead counsel for labor unions on close to a dozen challenges to OSHA rules, and I have worked for or advised Congress, OSHA, and other federal and state health and safety agencies on regulatory issues.

OSHA's Mission Has Been Undermined by Too Much Regulatory Analysis

Congress passed the Occupational Safety and Health Act of 1970 (OSH Act) to ensure "every working man and woman in the Nation safe and healthful working conditions." [1] OSHA protects workers by setting workplace standards and enforcing those standards through inspections. Every year, millions of workers are protected from the hazards posed by grain elevator explosions, dangerous equipment, toxics chemicals and materials, and dozens of other workplace hazards because of OSHA's work.

Unfortunately, OSHA's rulemaking process is now so burdened by requirements for regulatory analysis that the agency is incapable of issuing timely standards to protect workers. New workplace hazards and new scientific evidence about the health effects of exposure to a variety of toxic chemicals should result in the prompt issuance of new OSHA standards, but OSHA is finding it more difficult to respond to these threats to workers because the agency is now required to complete an ever increasing array of onerous,

[1] 29 U.S.C. §651(b).

duplicative, and unreasonable regulatory analyses. These analyses require staff time and agency resources that would be better spent identifying new threats to workers' health and enforcing existing safety standards.

Protecting worker safety is the clear and overriding goal of the OSH Act. The primacy of this objective has been upheld by the U.S. Supreme Court. In 1981, the Court ruled that worker safety, not cost-benefit analysis, should determine whether or not a workplace safety standard is warranted. Yet OIRA insists that OSHA conduct time-consuming, expensive, and duplicative studies of the "costs to industry" beyond those required by the OSH Act before issuing rules to protect the health of American workers. These studies allow OIRA to judge OSHA standards against a cost-benefit test the Supreme Court has held is improper. This needs to stop. Congress needs to explicitly limit OIRA's review powers.

The Processes Required to Issue Rules under the OSH Act Are Thorough and Balanced

Under the OSH Act, before OSHA can issue a new rule or standard, it must:

(1) comprehensively evaluate the nature and extent of the health and safety risks to workers;
(2) determine whether those benefits are significant;
(3) ensure that the necessary technology exists to comply with its rules; and
(4) assess the economic impact of those rules on (a) industry profits, (b) consumer prices, and (c) intra-industry competition.

In short, OSHA cannot issue a rule unless the impact of its proposal has been thoroughly researched and shown to address significant risks in the workplace at a reasonable and affordable cost.

Moreover, the OSHA rulemaking process permits members of the public greater opportunities to participate than other regulatory agencies that only operate under the Administrative Procedure Act (APA).

After this careful process, if the health and safety standard is challenged in court – and most OSHA standards are challenged – OSHA's analyses will be scrutinized more carefully by the courts than rules issued by other agencies. If a court rules that OSHA got the analysis wrong, the courts can stop the standard from going into effect. Thus, the bar for getting a rule implemented is higher at OSHA than for most other federal regulatory agencies because the OSH Act and OSHA's internal processes require it.

In the early days of its existence, it took OSHA from six months to two years to develop major rules – even controversial ones that addressed asbestos and vinyl chloride hazards. The preambles for both of those standards were five to ten pages, and the courts ruled OSHA's analysis was adequate. What is more, these standards have been effective in protecting workers from harm. Now, with the extra-statutory analyses that have been added to this process, it can take over a decade to upgrade or issue a new health and safety standard.

Analytic Requirements Added in the Past 40 Years Slow Health and Safety Protections Unnecessarily, Duplicate Effort, and Waste Public Resources

In the years since its creation, OSHA's charge to protect workers from harm has been undermined by Kafka-esque demands for additional reviews of existing rules mandated by new statutes and executive orders. Many of these additional analytic requirements overlap with, duplicate, and/or conflict with the requirements of the OSH Act and serve no apparent purpose other than to delay and burden the rulemaking process.

As new analytic requirements have been imposed on OSHA, the time needed to complete a rule has increased. GAO has calculated that, *on average*, it now takes almost eight years to promulgate an OSHA standard. Cumulatively, these requirements have crippled OSHA's ability to set new safety and health standards in a timely and responsive fashion.

Process Reforms that Slow Health and Safety Standards

In 1980, the Paperwork Reduction Act (PRA) created a new office in the Office of Management and Budget (OMB), the Office of Information and Regulatory Affairs (OIRA), and tasked it with serving as a central clearinghouse for all government forms. The PRA was supposed to reduce the burden of government paperwork on citizens and non-governmental entities. Ironically, centralization and review by OIRA generated new paperwork and delays for government agencies as they waited for the office to review and approve their requests to collect the information necessary to support new standards.

Shortly after OIRA's creation, President Ronald Reagan issued an executive order requiring rulemaking agencies to submit every regulation to OIRA for review and approval, and the office was tasked with determining whether the benefits of each rule outweighed its costs. Congress has never given OIRA this authority. Since the 1980s, the process has slowed so much that several significant OSHA health standards were issued after courts or Congress ordered the agency to move forward. (For example, it took six years and a lawsuit before OSHA issued a formaldehyde standard.)

In 1993, in Executive Order 12866, President Bill Clinton established the current regulatory review process, which encourages the use of cost-benefit analysis, risk assessment, and performance-based standards, and gives OIRA authority to coordinate rulemaking among agencies and ensure they align with the president's priorities. Agencies must submit drafts of proposed and final "significant"[2] rules to OIRA.

Under the presidency of George W. Bush, OIRA interfered even more aggressively with agency rulemaking activities. With E.O. 13272, OIRA imposed rigorous guidelines for cost-benefit analyses, including peer review (adding more time to the process) and began commenting on agency drafts before they had even been submitted for review. The Obama Administration has continued this regime of regulatory review.

In addition to the requirements for regulatory analysis imposed by E.O. 12866, between 1976 and 1984, Congress passed a series of laws designed to ensure regulations did not unduly burden small businesses. These laws added yet another set of analytic requirements to rulemaking. An Office of Advocacy was established within the Small Business Administration (SBA) in 1977 and was tasked with monitoring the impact of regulations on small business. Eventually, the Regulatory Flexibility Act (RFA) required all agencies to include an assessment of small business impacts as a key part of the rulemaking process and to use a "less burdensome alternative" if the rule would have significant impact on or affect a substantial number of small enterprises. By 1980, the law required agencies to solicit the views of small entities and the Office of Advocacy and to publish an initial and/or final analysis of the impact in the *Federal Register* or certify that the proposed rule would have no impact on small businesses. RFA requirements meant an agency would have to not only assess the benefits and costs of a new rule on the overall economy and regulated industries, but also assess its impact on small businesses. The burdens of analysis were growing, increasing the time and resources needed to propose new health and safety standards.

The OSH Act Requires an Evaluation of the Benefits and Costs of Proposed Rules

The original OSH Act requires OSHA to thoroughly examine the costs of the rules it imposes. Section 6(b)(5) of the OSH Act requires OSHA to determine, before it issues a final rule, that a standard is feasible, both technologically and economically. Before it can decide

[2] Significant regulatory actions under E.O. 12866 are those: (1) with an annual effect on the economy of $100 million or more; (2) inconsistent with a rule or action taken by another agency; (3) which would alter budgetary impact of government program or recipients of such; or (4) raise novel legal or policy issues. OIRA views all OSHA standards as "significant."

whether a standard is feasible, OSHA must make a "reasonable assessment of the likely range of costs and the likely effects of those costs" on each affected industry.[3]

OSHA standards protect hundreds of thousands of workers, in multiple industries, from harm. Obviously, the more workers and industries affected by a safety standard (for example, a sprinkler system for fire prevention), the higher the aggregate costs of a rule. Recognizing this, the courts have ruled that OSHA should "examine those [aggregate] costs in relation to the financial health of the industry and the likely effect of such costs on the unit consumer prices."[4] To ensure that it does not place an undue burden on small business, OSHA must make sure that its standard does not "threaten[ ] the competitive stability of an industry," increase inter or intra-industry competition, or create "undue concentration."[5]

OIRA Cost-Benefit Analysis and Risk Assessment Requirements Contradict the OSH Act and the Supreme Court's Interpretation of the Law

In addition to assessing the economic impact of its standard, OSHA must also complete a detailed scientific analysis of the nature and extent of the hazards posed to workers. When it can do so, OSHA quantifies this risk, but it is not required to do so by law.[6] Sometimes the science is not yet conclusive about the health effects on workers; in such cases, the courts have ruled that "OSHA cannot let workers suffer while it awaits the Godot of scientific certainty."[7] Instead, OSHA's scientific judgments must be supported "by a body of reputable thought."[8] In fact, after rigorous testing through the rulemaking process, OSHA's scientific determinations have been overwhelmingly upheld by the courts.

Significantly, the Supreme Court has weighed in on the use of cost-benefit analysis in OSHA standard setting. It held:

> Congress itself defined the basic relationship between costs and benefits, by placing the benefit of worker health above all other considerations save those making attainment of this benefit unachievable. Any standard based on a balancing of costs and benefits by the Secretary that strikes a different balance than that struck by Congress would be inconsistent with the command set forth in section 6(b)(5).

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[3] *United Steelworkers of America v. Marshall*, 647 F.2d 1189, 1266 (D.C. Cir. 1980).
[4] *Id. a*t 1265.
[5] *Id.*
[6] *Industrial Union Dep't. v. American Petroleum Inst.*, 448 U.S.607, 655 (1980); *Nat'l Maritime Safety Ass'n. v. OSHA*, 649 F.3d 743 (D.C. Cir. 2011).
[7] *United Steelworkers of America v. Marshall*, 647 F.2d at 1266.
[8] *Industrial Union Dep't v. American Petroleum Inst.*, 448 U.S. at 656.

Thus cost-benefit analysis is not required by the statute because feasibility analysis is.[9]

OIRA's demand that an OSHA rule meet a cost-benefit test is incompatible with the OSH Act. OIRA should be prohibited from evaluating and rejecting OSHA standards on the basis of a cost-benefit test. Any analysis by OIRA that uses a different standard than the one described above is improper. We believe that cost-benefit analyses simply cannot properly value some of the most important benefits of worker protections. Without adequate measures of benefits, and with the insistence on measuring aggregate and cumulative costs, cost-benefit analysis becomes a tool for blocking worker protections. Delaying worker protections by using an inherently flawed methodology is unjustifiable.

OIRA should not be permitted to second guess OSHA's scientific judgments or to demand scientific certainty before OSHA moves to protect workers. OIRA analysts are not qualified to assess the complex toxicological, epidemiological, and quantitative judgments OSHA makes when it evaluates workplace risks.

The OSHA Rulemaking Process Is Open and Participatory; OIRA Reviews Are Secretive and Subject to Undue Influence by Regulated Entities

OSHA rulemaking provides greater opportunity for comment and participation than is required by most agencies that operate under the Administrative Procedure Act. The procedures mandated by the OSH Act, commonly referred to as "hybrid rulemaking" procedures, ensure that OSHA's scientific, technical, and economic analyses are fully vetted. By contrast, OIRA reviews rules away from public scrutiny, in closed rooms with representatives of regulated industries. These industries typically argue against new rules.

OSHA usually begins the rulemaking process by publishing a request for information and/or advanced notice of proposed rulemaking – in other words, public input is sought early in the rule development process. For major rules, numerous stakeholder meetings are held in various locations around the country. If an OSHA standard will impact small business, OSHA is one of two agencies that must establish a special panel to get early input from small entities, as required by the Small Business Regulatory Enforcement Fairness Act (SBREFA). Once a proposed rule is issued, interested parties can submit written comments and evidence.

If any party requests a hearing during rulemaking – and a hearing is almost always requested – OSHA must hold one. An administrative law judge presides at the hearing. During the public hearing, interested parties may present testimony and any participant

[9] *American Textile Mfrs. Inst. v. Donovan*, 452 U.S. 490, 509 (1981) (emphasis added).

can cross-examine all witnesses. OSHA hearings are often held in several locations across the country and can go on for several weeks. Workers, public health officials, scientists, small business owners, union representatives, and business groups actively participate in these hearings. At the end of the hearing, OSHA provides the public with an opportunity to file post-hearing comments and post-hearing arguments.

All of the evidence on which OSHA's proposed rule is based, pre- and post-hearing comments, and hearing transcripts are included in a public docket. OSHA must base its final decision on information in this public rulemaking record. OSHA's explanation for its final rule must be supported by substantial evidence in the record.

By contrast, the OIRA review process is neither transparent nor open. Most meetings on proposed rules at OIRA are with industry opponents of regulation, not injured workers. Unlike the broad participation in OSHA rulemaking, only a select few get to meet with OIRA. While OIRA is supposed to make the list of individuals who attend such meetings public, it does not disclose what is discussed. While OSHA must base its regulatory decisions on the evidence it gathers and explain its regulatory choices, OIRA is not required to do so. Typically, neither OIRA nor the regulatory agencies disclose the changes in agency rules demanded by OIRA.

We believe the narrow, secretive OIRA review process undermines the public participation guarantees in the OSH Act. If OIRA is going to have a regulatory review role – and we believe that role should be substantially more limited than it currently is – it should be limited to reviewing OSHA's record and ensuring that the agency has reasonably carried out its statutory duties. OIRA should also have to publish the rule changes it demands with a written justification for why it is asking for those changes.

OIRA Delays Should Not Be Allowed To Bury Worker Protections.

E.O. 12866 mandates that OIRA complete its review of any proposed rule within 90 days (with a possible extension of another 30 days). OIRA staff have not been adhering to these deadlines.

The proposed rule limiting the amount of silica allowed in factories and other worksites is an example of the human costs of delay. In the decades this rule has been under consideration, thousands of workers have died and thousands of others have contracted a debilitating lung disease. According to Centers for Disease Control statistics, as many as 1.7 million workers are exposed to dangerous levels of silica in the workplace each year and

researchers estimate that 3,600 to 7,300 of them develop silicosis. Approximately 200 workers die of silicosis each year.[10] Their illnesses were preventable.

In 2003, OSHA completed a preliminary regulatory impact analysis of a draft proposed rule on silica and convened small business review panels. But, under the Bush Administration few worker protections moved forward and the silica proposal was scrapped. Early in the Obama Administration, OSHA revived its effort to reduce worker exposure to silica. It revised its regulatory impact analysis and sought peer review of its risk assessment. It drafted a proposed rule and sent it to OIRA for review in February 2011. Fourteen months later (as of today, 430 days, or 310 days past the deadline), OIRA is still reviewing a *proposed* rule. OIRA has offered no explanation for this delay. By delaying publication of this proposal, OIRA has made it impossible to proceed to public hearings. Regulatory review should not become a graveyard for burying rules.

The Benefits of Health and Safety Standards

Given the enormous investment of agency resources required to issue a standard, OSHA does not initiate the process without strong evidence of health risks or dangerous conditions that need to be rectified. Too often in the heated business rhetoric of today, this basic fact is lost**: workplace health and safety regulations save the lives, lungs, limbs, and health of American workers.**

Unfortunately, while the costs of lost wages, health care, and worker compensation due to exposure to workplace threats can be estimated, it is difficult to put a dollar value on the hardship and suffering of a family when a father dies on the job or a mother develops a chronic disease. Because of this, the benefits of health and safety regulations tend to be underestimated.

Meanwhile, independent analyses of the economic impact of various standards demonstrate that industry estimates of the costs of complying with new health and safety rules are often exaggerated. The costs of compliance rarely turn out to be as high as industry claims. In fact, the General Accounting Office (now the Government Accountability Office) conducted a retrospective review of the costs of federal regulations on 15 representative companies. It concluded that industry representatives have no reliable method of estimating the incremental cost of regulation, and federal agencies have no reliable method of verifying industry's cost estimates.[11]

[10] OMB Watch, "Worker Safety Rule Under Review at OIRA for Over a Year: A Tale of Rulemaking Delay," Feb. 22, 2012, *available at* http://www.ombwatch.org/node/11984.

[11] U.S. Gen. Accounting Office, *Regulatory Burden: Measurement Challenges and Concerns Raised by Selected Companies*, GAO-GDD/97-2, Nov. 1996.

Costs of compliance studies also fail to take into account the positive role that new standards can play in encouraging innovation and the use of new technologies by firms and industries. A 1995 review of major OSHA rules by the now defunct Office of Technology Assessment found that OSHA almost always *overestimated* the costs of rules because advances in technology were not factored into the analysis: "the actual compliance response that was observed included advanced or innovative control measures that had not been emphasized in the rulemaking analyses, and the actual cost burden proved to be considerably less than what OSHA estimated."[12] By way of example, OSHA's cotton dust and vinyl chloride standards were not only less costly than predicted, but led to technological innovations that made the covered industries more productive.

A comprehensive review of the relationship between industry regulations and job growth within those industries conducted by the Economic Policy Institute found that most regulations result in modest job growth.[13] Even researchers at the Mercatus Center, a conservative regulatory policy center, acknowledged in written comments to House Oversight and Government Reform Committee Chair Darryl Issa, and in testimony to that committee, that there is little evidence that at a macro level, regulations have caused massive job loss in the United States.[14] There is no evidence that occupational safety and health regulations issued by OSHA have cost America jobs.

Pending Regulatory Reform "Solutions" Would Exacerbate Delays and Undue Influence by Regulated Industries

Unfortunately, recent regulatory reform proposals would do nothing to ensure workers are protected from hazards; instead, they would slow or stop the rulemaking process. Four separate regulatory reform proposals are pending in the Senate: the Regulatory Accountability Act (S. 1606), the Regulations from the Executive in Need of Scrutiny (REINS) Act (S. 299), the Regulatory Flexibility Improvements Act (S. 1938), and the Regulatory Time-Out Act (S. 1538). These bills, and others like them, would change the regulatory process in different ways but would have the same ultimate result: more delay, fewer standards to protect workers, and more illness and injury among exposed workers.

Regulatory Accountability Act (S. 1606)

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[12] U.S. Office of Technology Assessment, *Gauging Control Technology and Regulatory Impacts in Occupational Safety and Health: An Appraisal of OSHA's Analytical Approach*, OTA-ENV-635, Sept. 1995.

[13] Isaac Shapiro & John Irons, *Regulation, Employment and the Economy: Fears of Job Loss are Overblown*, Economic Policy Institute (2011).

[14] Letter from Richard Williams, Ph.D., Dir. of Policy Research, Mercatus Ctr, to Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform (Jan. 5, 2011) (on file with author); Testimony of Jerry Ellig, *Regulatory Analysis: Understanding Regulation's Effects*, before the H. Comm. on Oversight & Gov't Reform (Feb. 10, 2011).

The Regulatory Accountability Act (RAA) is a breathtakingly broad bill that would fundamentally rewrite the Administrative Procedure Act (APA). Currently, there are more than 110 separate procedural requirements in the rulemaking process;[15] the RAA would add more than 60 new procedural and analytical steps. Commentators have estimated that the RAA would add at least 21 to 39 months to the rulemaking process for the most important rules, meaning that **the average OSHA rulemaking would take more than 12 years to complete** – potentially spanning four different presidential administrations.[16]

OSHA rulemaking already includes a process that gives participants many opportunities to present their views and to challenge those with opposing views. It does so in an open process. The RAA would supplant these proven procedures with a more adversarial process. It would mandate cost-benefit analysis, overturning the Supreme Court's ruling in the *Cotton Dust* case. It would require that OSHA always use the lowest cost rule, leaving workers with less protection, probably nothing more than a dust mask to protect themselves from known carcinogens. Further, it authorizes the courts to disrupt the rulemaking process before it has been completed. Each of these changes would complicate rather than simplify rulemaking, and delay worker protections.

Regulations from the Executive in Need of Scrutiny (S. 299)

The Regulations from the Executive in Need of Scrutiny, or REINS Act, would reinsert Congress into the rulemaking process by requiring that both houses of Congress approve each major rule, with no alterations, within a 70-day window. If either chamber fails to approve the rule, it will not take effect and cannot be reconsidered until the next congressional session. Given the polarized character of Congress today, this law is a recipe for a freeze on new rules.

Such an affirmative approval requirement would turn the current process upside down. Congress already has substantial power to influence agency rulemaking: through its oversight power; through the appropriations process; and under the Congressional Review Act of 1996. There is no reason to require an affirmative vote of Congress before a rule takes effect.

The REINS Act would waste agency resources. For example, it took OSHA more than 10 years to publish a standard regulating the operation of cranes and derricks at construction sites, even though both industry and unions agreed a standard was needed. If the REINS

[15] *See* Mark Seidenfeld, *A Table of Requirements for Federal Administrative Rulemaking*, 27 Fla. St. L. Rev. 533 (2000), *available at* http://www.law.fsu.edu/journal/lawreview/downloads/272/Seid.pdf.
[16] Testimony of Sidney A. Shapiro, University Distinguished Chair of Law, Wake Forest School of Law, at Hearing on H.R. 3010, The Regulatory Accountability Act of 2011, before the H. Comm. on the Judiciary, 112th Cong. 4 (Oct. 25, 2011) at 6.

Act became law, inaction by Congress would block the rule from going into effect, wasting the significant resources OSHA had invested in developing the rule.

Regulatory Flexibility Improvements Act (S. 1938)

The Regulatory Flexibility Improvements Act would expand range of rules covered by the Regulatory Flexibility Act to include those that have a reasonably foreseeable indirect effect on small businesses; establish more onerous requirements for the initial and final regulatory flexibility analyses, including an estimate of cumulative impacts on small businesses; allow the Chief Counsel for Advocacy of the Small Business Administration to issue rules to govern federal agencies' rulemaking procedures; and establish a more onerous requirement for the notice that federal agencies must give the Small Business Administration prior to publishing a proposed rule.

OSHA is already required to analyze the impacts of its standards on small business, consult with small business owners and the SBA about those impacts, and make changes to its rules where appropriate to minimize those impacts. Additional analysis of small business impact duplicates the requirements in existing law. Workers in small businesses face the same hazards as those in larger business. This bill would do little to protect workers in small businesses or to help their employers reduce such hazards. Moreover, it concentrates enormous power in the hands of one appointed official in the Office of Advocacy, while the OSHA hearing process gathers information from a host of small business owners from all over the country.

Regulatory Time-Out Act (S. 1538)

The Regulatory Time-Out Act, which would prohibit agencies from issuing most significant regulations for a year, is one of several bills which would prohibit new rules. These laws would simply keep federal agencies from carrying out their legally defined missions of protecting the health and safety of the American people.

When Congress passed the OSH Act in 1970, it promised workers that OSHA would protect them from workplace hazards. Too many chemicals and other hazards remain unregulated. The Environmental Protection Agency has listed more than 62,000 chemicals in its Toxic Substance Control Act Chemical Substance Inventory, but OSHA regulates worker exposures to only 400 of them.[17] Too many of OSHA's existing standards are based on outdated science. They need to be upgraded to reflect current scientific and medical research. The current rulemaking process makes this impossible.

Streamlining Improvements in Health and Safety Protections

[17] Occupational Safety and Health Administration, "Hazardous and Toxic Substances," http://www.osha.gov/SLTC/hazardoustoxicsubstances/index.html (last visited Apr. 16, 2012).

The process for issuing workplace health and safety standards is broken and needs to be fixed. We need to update workplace health and safety standards, not bury them. None of the pending regulatory reform proposals would fix the OSHA standard setting process. Rather, each of these proposals is designed to further delay or shut down the regulatory process. Passage of these bills would hurt workers and make them less safe.

Instead of following this low road, Congress should streamline the rulemaking process so that standards can move forward in a reasonable amount of time, after thoughtful scrutiny of the need for new protections and their costs, without unnecessary and duplicative reviews and analysis. Congress should limit the role of OIRA and non-technical experts in standard setting. Only with such reforms will workers gain the protections Congress promised them when it passed the OSH Act more than 40 years ago.

Administrative Procedure Act (5 U.S.C. § 551 et seq.)
Passed in 1946

- The Administrative Procedure Act is the bedrock of the regulatory process. It offers baseline procedures for both "formal" (on the record) and "informal" (notice-and-comment) rulemaking.

Paperwork Reduction Act (44 U.S.C. §§ 3501-3520)
Passed in 1980, significantly amended in 1986 and 1995

- The Paperwork Reduction Act requires that OSHA, and other agencies, obtain approval from the Office of Information and Regulatory Affairs (OIRA) for any survey or "collection of information" designed to help the agency determine the economic impact or practical implication of proposed rules. (OIRA was created by the Paperwork Reduction Act.)

Regulatory Flexibility Act (5 U.S. C. §§ 601-612)
Passed in 1980

- The Regulatory Flexibility Act requires OSHA, and other agencies, to specifically analyze the effect of its regulations on small entities. OSHA must publish the reason it is considering regulating, a description of the small entities which will be affected, a description of the proposed rule's compliance requirements, and a list of alternative actions.

Executive Order 12,291
Signed in 1981

- President Reagan's Executive Order was the first to require rulemaking agencies to submit all regulations to the then-newly created OIRA. OIRA was tasked with reviewing and approving rules to ensure they met a cost-benefit test. (This Executive Order has been supplanted by later Executive Orders on regulatory review.)

Executive Order 12,866
Signed in 1993

- President Clinton's Executive Order restricted OIRA to reviewing only "economically significant" (those with a $100 million economic impact) regulatory actions, as well as those which created conflict with another agency's rules; altered the budgetary impact of entitlements, grants, user fees, or loan programs; or raised novel legal or policy issues. This decreased the number of rules OIRA reviewed each year from between 2000 and 3000 to between 500 and 700. EO 12,866 set deadlines for OIRA reviews and established standards for agency and OIRA transparency.

Unfunded Mandates Reform Act (2 U.S.C. §§1532-1538)
Passed in 1995

- The Unfunded Mandates Reform Act requires OSHA, and other agencies, to analyze and minimize the costs a proposed regulation would impose on private parties and

state and local governments. OSHA, and others, must also identify alternative actions and justify the reasons for selecting its preferred rule.

Small Business Regulatory Enforcement Fairness Act (110 Stat. 857, 5 U.S.C. § 601 note)

Passed in 1996

- The Small Business Regulatory Enforcement Fairness Act (SBREFA) permits judicial review of OSHA's, and certain other agencies', compliance with the Regulatory Flexibility Act. In addition, OSHA must now convene an "advocacy review panel" of representatives of small entities before it can publish a regulatory flexibility act analysis. SBREFA also requires OSHA, and certain other agencies, to assist small entities with understanding and complying with new and existing regulations, and requires that the agency waive some fines for noncompliant small entities.