



August 21, 2012

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Director, Committee on Science, Technology, and Law
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500 Fifth St., NW
Washington, DC 20001

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H. Russell Frisby, Jr.
Committee Chair, Committee on Regulation
Administrative Conference of the United States
1120 20th St., NW Suite 706 South
Washington, DC 20036

Re: NAS workshop on Improving the Use of Science in the Administrative Process

Dear Dr. Mazza and Mr. Frisby:

We are looking forward to the upcoming workshop at which members of the National Academies' Committee on Science, Technology, and Law will review and discuss the Administrative Conference of the United States' (ACUS) ongoing project related to science in the regulatory process. We are writing to encourage you to ensure that all of the draft recommendations presented to ACUS receive adequate attention. In particular, we are interested in the recommendations related to the role of the White House Office of Information and Regulatory Affairs (OIRA), especially with respect to OIRA's failure to follow the transparency requirements of Executive Order 12,866 and its interference in matters that involve expert scientific judgment.

OIRA's impact on the analysis of science in the rulemaking process is problematic for two related reasons. First, the office is not properly staffed to be involved in scientific deliberations. They employ fewer than a handful of scientists and the upper management sets policies driven primarily by political considerations. Second, most of OIRA's interactions with agencies happen in a non-transparent way, shielded by the so-called "deliberative process" privilege.

Based on our extensive research and experience with federal public health rulemaking – covering everything from environmental regulations to worker health and safety to food safety – we know that OIRA operates as a one-way ratchet,



weakening safeguards that protect the public and the environment. The Center for Progressive Reform (CPR) recently completed the most comprehensive empirical analysis of OIRA's role in health, safety, and environmental rulemaking ever conducted. Entitled *Behind Closed Doors at the White House: How Politics Trumps Protection of Public Health, Worker Safety, and the Environment* (available at http://www.progressivereform.org/articles/OIRA_Meetings_1111.pdf), the report covers 6,194 OIRA reviews of regulatory proposals or final rules over a ten-year period. We discovered that OIRA changed 84 percent of the work forwarded to it by the Environmental Protection Agency (EPA), often at the behest of industry and law firm lobbyists. In fact, even though EPA was responsible for only 11 percent of the individual matters sent to OIRA for review during this period, the agency was the subject of 40 percent of the meetings OIRA held with outside parties. As disturbing, the 65 percent of the appearances by 5,759 participants involved industry representatives, about five times the number that represented public interest groups. Rules that were the subject of these extraordinarily biased meetings were 29 percent more likely to be changed during the review than those that did not provoke such meetings.

Particularly relevant to the upcoming meeting, OIRA staff also has a discouraging history of meddling with EPA's chemical risk assessment process as implemented through the Integrated Risk Information System (IRIS). The Government Accountability Office released a report in December 2011 explaining the long delays that undermine this vital effort. See *CHEMICAL ASSESSMENTS, Challenges Remain with EPA's Integrated Risk Information System Program* (GAO-12-42) (available at <http://www.gao.gov/assets/590/586620.pdf>). Among other factors, GAO emphasized how OIRA staff has delayed certain risk assessment documents in an effort to re-establish control over how EPA runs IRIS.

ACUS's consultant on this project, Wendy Wagner, has developed a report that provides important insight into OIRA's role in regulatory science, along with draft recommendations that would be a step in the right direction toward eliminating problems that OIRA causes. We were dismayed to see many of her important, OIRA-related recommendations come under unrelenting and biased attack at the last ACUS meeting for this project, and we are delighted to see that NAS has stepped in to provide a forum for a more balanced consideration of such issues.

Again, we look forward to the meeting.

Sincerely,



Rena I. Steinzor

Professor, University of Maryland Carey
School of Law
President, Center for Progressive Reform



Matthew Shudtz

Senior Policy Analyst, Center for Progressive
Reform

cc: Reeve T. Bull, ACUS Staff Counsel