

RICHARD BLUMENTHAL  
CONNECTICUT

COMMITTEES:

ARMED SERVICES

JUDICIARY

COMMERCE, SCIENCE, AND  
TRANSPORTATION

VETERANS' AFFAIRS

AGING

## United States Senate

WASHINGTON, DC 20510

702 HART SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-2823  
FAX: (202) 224-9673

90 STATE HOUSE SQUARE, TENTH FLOOR  
HARTFORD, CT 06103  
(860) 258-6940  
FAX: (860) 258-6958

<http://blumenthal.senate.gov>

May 7, 2013

The Honorable Sylvia Mathews Burwell  
Director  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

Dear Director Burwell:

I write regarding several regulatory proceedings currently under review by the Office of Information and Regulatory Affairs (OIRA). Cost-benefit analysis can play an important role in policy-making, and OIRA review of agency decisions can help to ensure that rules maximize net benefits to society. However, when proposals get seriously delayed at OIRA it undermines the credibility and legitimacy of the Office as an independent arbiter.

As you know the Executive Order that requires federal agencies to submit proposed and final rules to OMB for review, also sets out a 90-day timeframe for OIRA to complete its work. Currently, 84 of the 153 regulatory actions pending review at OIRA have been there longer than 90 days.

I am particularly troubled about two pending actions that have been under review for an unacceptable amount of time. First, a proposed rule from the Occupational Safety and Health Administration (OSHA), which seeks to protect workers from exposure to crystalline silica dust, has been before OIRA for 813 days. Second, Congress mandated the Department of Transportation create a rule to expand visibility in and around cars to protect children from being backed over. That proposal has been before OIRA for 538 days.

OSHA's proposed rulemaking seeks to limit workers' exposure to cancer-causing silica dust. According to the Center for Disease Control 1.7 million workers are exposed to dangerous levels of silica each year, many go on to contract debilitating lung conditions. The rear-view visibility rulemaking from DOT was mandated by Congress, in order to address visibility problems in cars. This proposed rule would help save children that are injured or killed because drivers don't see them while backing up. Even a small blind zone of just a few feet can be big enough for a

child to dart behind a vehicle, unseen by the driver. These are common-sense proposals with real-life consequences.

I am also concerned about reports that a guidance by the Food and Drug Administration (FDA), proposing limits on the amount of arsenic in apple juice, is being held at OMB. In January of 2012, *Consumer Reports*® exposed concerns about arsenic and lead in apple and grape juices. The company found that roughly 10 percent of the juice samples they tested had total arsenic levels that exceeded federal drinking-water standards. Most of that arsenic was inorganic arsenic, a known carcinogen. As a result, FDA committed to conducting tests and offering new guidelines to reduce the risks posed by arsenic in juice. It's recently been reported in that magazine and other publications that the FDA has been waiting on OMB for review of this new guidance for some time now.

Given the health and safety implications of these agency actions, the length of delay in OIRA's review is unacceptable. I urge you to complete your review of these proposed agency actions immediately and return those actions to the promulgating agencies. Otherwise, I would like you to please explain in writing the reasons for delay, and propose an alternate timeline for completion of OIRA's review process.

OIRA serves an important purpose, but attached to that responsibility is an obligation to be open and transparent to the public. Undue delay in the rulemaking process poses costs on the public, creates uncertainty in the industry, and reflects poorly on OIRA's role in the regulatory process by giving the impression that life-saving public policy is being bottled up for political reasons or due to pressure from special interests.

Cost-benefit analysis can be complex, and it's understandable that from time to time OIRA may exceed its ninety day timeframe. When that happens, the public should be informed of the delay, the justification and the amount of time the Administration estimates it will take to complete its review.

Sincerely,



RICHARD BLUMENTHAL

Chairman, Judiciary Subcommittee on Oversight, Federal Rights, and Agency Action