Chemical Producers & Distributors Association

March 16, 2009

Office of Information and Regulatory Affairs
Records Management Center
Office of management and Budget
725 17th Street, NW
Washington, DC 20503

Re: Federal Regulatory Review; 74 FR 8819 (February 26, 2009)

Dear Ms. Echols:

The Chemical Producers & Distributors Association (CPDA) provides these comments in response to the "Federal Regulatory Review" notice published in the *Federal Register* on February 26, 2009.

The Office of Management and Budgets (OMB), Office of Information and Regulatory Affairs (OMB/OIRA) regulatory review process has evolved over several Democratic and Republican presidential administrations, culminating in the Clinton Administration's Executive Order (E.O.) 12866. CPDA applauds the Obama Administration in requesting public comment on the development of a new executive order on regulatory review, as was done for E.O. 12866.

Comments and Recommendations

The President, through OMB/OIRA, has the Constitutional authority and duty to ensure that laws are faithfully executed. CPDA believes that centralized review is an appropriate procedure to promote regulatory goals and achieve uniform compliance with all laws applicable to promulgation of regulations. Therefore, an amended E.O. 12866 should provide guidelines for the consistent, transparent, and timely development and review of individual regulatory actions while affording accountability across the agencies. In addition, an amended order should provide the framework OMB/OIRA needs to meet its reporting and review requirements under several applicable statutes, including the Unfunded Mandates Reform Act, the Regulatory Flexibility Act, and the Paperwork Reduction Act of 1995.

CPDA believes many of the principles and processes laid out in E.O. 12866 have proven over time to result in promulgation of regulations that are effective, consistent, sensible, and understandable. OMB/OIRA review of individual agency regulatory proposals under

E.O. 12866 have provided a transparent process for ensuring appropriate agency regulations and private sector expenditure for public health and environmental safety based on the best reasonably obtainable scientific, technical, and economic information concerning the need for and consequences of regulation. However, as noted in the January 30, 2009 memorandum on regulatory review, much that has been learned since the inception of E.O. 12866 can inform revision of the order.

Tools for Achieving Public Goals through the Regulatory Process:
CPDA does not believe, as alleged by other commentators, that E.O. 12866 is "anti-regulatory." The order merely requires agencies to engage in careful and transparent consideration of the costs and benefits of available regulatory alternatives, and to impose the least burden on society and businesses consistent with the desired regulatory objectives. The methods used to assess possible burdens, such as costs, are not inherently anti-regulatory; however, they can be easily manipulated to support predetermined outcomes. Notwithstanding such possibilities, analytical methods such as cost-benefit analysis can properly inform decision-making when used judiciously. E.O. 12866 does not require specific quantification of benefits, recognizing the difficulty and controversy often associated with estimating societal values. Instead, the order directs an agency to consider all essential quantitative and qualitative costs and benefits. This procedural requirement does not require specific outcomes; it simply provides agencies with an array of information to facilitate informed regulatory decisions consistent with administration policies. A function of a revised E.O. 12866 should be to provide guidance on the appropriate use of the many analytical tools available to inform regulatory decision-making, including those in the behavioral sciences and the biological sciences. Cost-benefit analysis should not be abandoned, but rather improved by, for example, including use of distributional costs and benefits rather than point estimates, as is being done for other risk assessment–related tools.

Other analytical methods that can inform regulatory decision-making and review should also be considered. For example, cost-effectiveness analysis of alternatives within a regulatory objective can identify the least costly means of achieving an objective. E.O. 12866 directs agencies to design regulations consistent with this approach, but it does not specify where and when this effort should be applied. Risk-risk analysis is another tool regulatory agencies could employ to ensure that the beneficial risk reduction offered through a regulation does not, in fact, create consequential risk equal to or greater than the intended target risk. Finally, regulatory economic impact analysis considers the effects of regulations on economic sectors, and not individual firms, and therefore focuses on the macroeconomic impacts of significant regulatory actions. Guidance to the agencies on use of these tools and others could be provided in an executive order to minimize potential undue delay arising from the regulatory review process.

Relationship between OIRA and the agencies:
CPDA believes that OMB/OIRA review of individual regulatory actions should specifically include "significant" regulations; those having an annual economic effect on the economy of $100 million or more, or adversely affecting, in a material way, a sector of the economy (as defined in E.O. 12866 Section 3(f)(1)). In addition, CPDA believes that the review of "significant guidance" (as defined in E.O. 13422) should be reinstated if such guidance contains enforceable provisions. CPDA believes agencies may be

incentivized to use guidance as a means to circumvent the more protracted notice-and-comment rulemaking procedures that serve to promote public participation in the agency regulatory process.

CPDA also agrees with other commentators that a revised E.O. 12866 could strengthen the role of the Small Business Administration (SBA) and its Office of Advocacy (Advocacy) in commenting on proposed rules affecting small businesses to ensure full compliance with the Regulatory Flexibility Act. The SBA has reported that small businesses bear a disproportionate share of the federal regulatory burden. On a per employee basis, it costs 45 percent more for small firms to comply than large firms, and compliance with environmental regulations costs over 300 percent more for small firms[1]. The executive order could direct the agencies to address SBA Advocacy comments in the *Federal Register* on the proposed rule, the certification of no significant impacts on a substantial number of small businesses, and on promulgation of the final rule. To meet this commitment, agencies should provide to the SBA Advocacy a copy the proposed rule, certification of no significant impacts on a substantial number of small businesses, and the final rule no less than 30 days prior to submission of the proposed or final rule to OIRA.

Conclusion

CPDA represents the interests of large and small generic pesticide registrants and the manufacturers and suppliers of inert ingredients used in the plant protection industry and formulators and distributors of non-proprietary pesticide products. The pesticide industry is one of the most highly regulated industries in the U.S., and under FIFRA and its implementing regulations, pesticide product companies have provided significant quantities of scientific and economic data to the U.S. Environmental Protection Agency to support agency decisions on environmental and human health safety. These data are also provided, at a considerable cost to the pesticide industry, to ensure the significant food and agricultural benefits U.S. consumers enjoy through judicious use of our products. A strong regulatory review executive order can provide a transparent, consistent process whereby agencies must adequately evaluate and present to the Administration complete information on the most policy-effective and cost-effective regulatory solutions that enhance, not stifle, the regulatory process.

Thank you for providing the opportunity to share our views on the regulatory review process.

Respectfully,

Susan Ferenc
President

[1] The Impact of Regulatory Costs on Small Firms. Small Business Research Summary No.264, September 2005.