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March 31, 2009

Filed by email to: oira_submission@omb.eop.gov

Office of Information and Regulatory Affairs
Records Management Center
Office of Management and Budget
Attn: Mabel Echols
Room 10102, NEOB
725 17th Street, NW
Washington, DC 20503

Re: Comments Regarding Executive Order on OMB Regulatory Review

Dear Sir or Madam:

Thank you for the opportunity to provide comment on behalf of the United American Nurses, AFL-CIO (UAN). UAN represents 45,000 registered nurses working in direct patient care throughout the United States. Because registered nurses face a plethora of workplace hazards every day, these comments will focus on federal regulatory review in relation to the Occupational Safety and Health Administration (OSHA).

The Relationship between the Office of Information and Regulatory Review (OIRA) and the Agencies

We recommend the removal of additional analytical requirements imposed by executive order on OSHA and the other agencies. OSHA is statutorily mandated to set workplace safety standards and has the scientific expertise to do so. In contrast, OIRA is staffed by 35-40 economists whose focus is naturally only on the economic impact of standards and who are responsible for reviewing all new standards from all of the agencies. This slows the already lengthy process of setting new safety standards. Centralized review does not

add value to the regulatory process, but only adds one more hurdle to new safety standards—a hurdle which is biased toward short-term economic gains for employers against long-term health and welfare benefits for workers.

We believe that there is a more beneficial role for OIRA acting as a facilitator among the many agencies, particularly where jurisdictions overlap. An example of this is facilitating coordination between OSHA and the Department of Health and Human Services in development of worker safety protections within the Pandemic Influenza National Response Plan. Protecting health care workers and other essential personnel will be critical to effective treatment and infection control efforts during a flu pandemic. Additionally, OIRA can assist the agencies with regulatory planning, helping them to identify resources and resource deficits in order to most effectively meet their mandates.

Disclosure and Transparency

We appreciate the opportunity to provide comment on a new Executive Order on Federal Regulatory Review. Transparency among OIRA and the agencies is critical. All communications between OIRA and the agencies regarding rulemaking must go into the public docket and be part of the rulemaking record.

Encouraging Public Participation in Agency Regulatory Processes

The Occupational Safety and Health Act of 1970 includes public participation procedures. We believe this is sufficient to encourage participation and transparency.

The Role of Cost-Benefit Analysis

Cost-benefit analysis should play a very limited role in rulemaking because the impacts of many occupational hazards simply cannot be monetized. Nurses face a wide array of hazards daily—including exposure to infectious diseases; musculoskeletal injuries from lifting and transferring patients; chemical exposures from drug residues; fatigue and stress from long shifts and inadequate staffing; and potential violence from patients and their families. Attempting to measure the financial costs and benefits of protecting workers is short-sighted and devalues their health and well-being.

The costs for some of these hazards have proven more quantifiable than others. For example, nurses' back injuries cost an estimated \$16 billion annually in workers' compensation costs. Medical treatment, lost work days, light duty and employee turnover cost the industry an additional \$10 billion.¹ Several studies have made the "business case" for the use of assistive patient handling equipment.² It is not implausible to estimate the costs and benefits of an intervention that prevents acute injuries.

However, even these studies demonstrate the limitations of cost-benefit analysis in standard setting. Estimates of the number of injured nurses are likely to be too low, especially if the data are derived from the Bureau of Labor Statistics (BLS). In 2008, the House Labor and Education Committee issued a report documenting that up to 70 percent of occupational injuries are not reported to the BLS.³ Reported musculoskeletal injuries in nurses are the tip of the iceberg, reflecting acute injuries that are severe enough to warrant days away from work. Acute injuries are the end result of cumulative damage to spinal discs. Because there are few nerve endings in the discs, severe damage is not discovered until there is a precipitating event.

Moreover, it is one thing to design a study to examine the cost and benefits of a particular intervention in one place, such as the implementation of a safe patient lifting program in a hospital. It is another to design a study which attempts to gauge the comprehensive costs and benefits across society. In the mean time, more nurses are injured and some of them are condemned to disability and pain.

For most hazards that nurses face, the risks are impossible to quantify. Over the course of a career, a nurse inhales or touches unknown amounts of aerosolized hazardous chemicals through the drugs she or he administers to patients and the drugs the patients excrete through respiration and elimination. Drugs are given to patients to treat specific conditions with the understanding that the benefits of the drugs outweigh the side effects. But nurses are regularly exposed to low levels of powerful chemicals meant to kill cancer cells, viruses, inhibit hormones, etc. The most that we know at this point is that measurable concentrations of hazardous drugs have been found in health care workers' urine.⁴ One study found increased risk of leukemia in oncology nurses.⁵

It is because of the nature of such hazards—pervasive, unmeasured, and cumulative—that we believe cost-benefit analysis is inappropriate and inhumane for safety and health rulemaking. Time spent attempting to monetize costs and benefits is better spent creating safe standards and protecting workers.

The Role of Distributional Considerations, Fairness, and Concern for the Interests of Future Generations

Distributional considerations—assuming this means distribution of wealth—is not applicable to OSHA's mission, but fairness is. Workers should not be expected to physically bear the costs of unsafe conditions. The reality is that they do. Some hazards that nurses face, such as infectious disease, generally do not have lasting consequences. But many occupational hazards ruin the health and well-being of nurses. No one should be expected to bear these life-long costs.

Recent events, such as food and drug safety scares, showed the American public that we need the Federal Government to regulate business and protect public safety. If we are concerned about impacts on future generations, then we should not weigh short-term economic interests against long-term health and welfare costs.

Methods of Ensuring that Regulatory Review does not Produce Undue Delay

We support the removal of analytical requirements imposed on the agencies by the executive branch. Congressionally and judicially imposed requirements ensure that all significant factors are considered in rulemaking. We believe that a more productive role for OIRA is to assist the agencies with planning and to identify sources of delay for proposed rules that have become stalled within the agency.

Thank you for the opportunity to comment.

Sincerely,

Sara Markle-Elder

Sara Markle-Elder

Research Specialist

United American Nurses, AFL-CIO

¹ Edlich, Richard F., K. Winters, M.A. Hudson, L.D. Britt, W. Long, "Prevention of disabling back injuries in nurses by the use of mechanical patient lift systems," *Journal of Long-Term Effects of Medical Implants*, 2004, 14(6).

² Collins, J.W., L. Wolf, J. Bell, B. Evanoff "An evaluation of a 'best practices' musculoskeletal injury prevention program in nursing homes," *Injury Prevention*, 2004, 10.

Nelson, Audrey, Mary Matz, Fangfei Chen, Kris Siddharthan, John Lloyd, Guy Fragala, "Development and evaluation of a multifaceted ergonomics program to prevent injuries associated with patient handling tasks," *International Journal of Nursing Studies*, August 2006, 43(6).

Spiegel, Jerry, Analee Yassi, Lisa Ronald, Robert Tate, Penny Hacking, Teresa Colby, "Implementing a resident lifting system in an extended care hospital: Demonstrating Cost-Benefit," *AAOHN Journal*, March 2002, 50(3).

³ <http://edlabor.house.gov/publications/20080619WorkplaceInjuriesReport.pdf>

⁴ Harrison, B.R., "Risks of handling cytotoxic drugs," In: Perry, M.C., ed. *The chemotherapy source book*. 3rd ed. Philadelphia: Lippincott, Williams and Wilkens; 2001. pp. 566-82.

⁵ Skov, T., et al. "Leukaemia and reproductive outcome among nurses handling neoplastic drugs," *British Journal Ind Med* 1992; 49 (12):855-61.