

Congress of the United States
Washington, DC 20515

July 11, 2012

The Honorable Cass R. Sunstein
Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Administrator Sunstein,

We are writing in response to a May 11, 2012 letter you received from nine members of the U.S. House of Representatives that makes a variety of claims about the content and impact of a draft Environmental Protection Agency (EPA) proposed rule currently under review by the Office of Management and Budget (OMB).

The draft proposed rule has not yet been publicly released, but according to the description available on the OMB website, the draft proposal aims to ensure that procedures for claiming Confidential Business Information (CBI) “in data from health and safety studies are consistent with the language of section 14(b) of TSCA.”¹ We believe that this rulemaking is in the public interest and necessary for EPA to properly administer current law, and should be allowed to advance through the established review and comment process.

Section 14(b) of the Toxic Substances Control Act (TSCA) expressly precludes health and safety information for chemicals from being claimed as CBI and kept from the public. This provision extends both to chemicals already in commerce and to new chemicals for which pre-manufacture notification to EPA is required, though the proposed rule would address only the latter.

Nevertheless, for decades, chemical companies have concealed from the public the identities of chemicals for which they have been required to submit health and safety information to EPA, simply by claiming the identities of those chemicals to be CBI. Until recently, EPA took a passive approach to such claims and rarely challenged them. The result is that the public may learn that a chemical causes birth defects in mice, for example, but it is unable to know which chemical is the cause. Tens of thousands of cases of health and safety studies with secret identities have accumulated, posing a daunting task for EPA as it seeks now to enforce the public’s ‘Right to Know’ about the health and environmental effects of exposures to chemicals.

There are many arguments in favor of this proposed rule:

- Section 14(b) of TSCA makes clear that Congress intended for companies and EPA to provide the public with access to vital information contained in health and safety studies, which can show the potential for a specific chemical to cause cancer, organ damage, birth defects, or other acute or chronic effects.

¹ <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201104&RIN=2070-AJ87>

- There is nothing in the current statute to indicate that Congress intended the identities of chemicals that are the subject of such studies to be concealed from the public.
- The specific identity of a chemical linked to adverse health effects is an intrinsic part of a health and safety study, as is specified in current EPA regulations. Knowledge of the chemical identity is essential for information from such studies to be of any use to the public. A generic chemical name may refer to dozens, hundreds, or even thousands of chemicals. Identifying only a generic name (a proposed alternative to disclosure of specific chemical identity) would not differentiate between structurally related chemicals that can differ dramatically in their potential to cause health effects. Use of a generic name to search for information about a specific chemical could actually mislead the public or researchers by directing them to information about other chemicals that differ from the chemical of interest in their hazards or risks.
- Section 14(b) of TSCA expressly precludes disclosure of “processes used in the manufacturing or processing of a chemical substance or mixture” and in the case of a mixture, “data disclosing the portion of the mixture comprised by any of the chemical substances in the mixture.” EPA’s proposal would in no way affect companies’ ability to protect such information, nor would it remove current protections for information other than health and safety information.
- There is no indication that EPA’s proposed rule would require a chemical’s identity to be disclosed in a manner that would publicly link it to the company producing or using it or to any proprietary process, formulation, product or material in which it is used.

The public notice-and-comment period required for proposed regulations under the Administrative Procedures Act is the long-established method by which any stakeholder can register views about a regulatory proposal, once the relevant details have been released. The EPA, the public and all stakeholders will benefit from using this open process to comment on any provisions once the rule has been proposed. Therefore, we ask that you complete your review of this important proposal without delay, and allow EPA to release this proposed rule for public notice and comment.

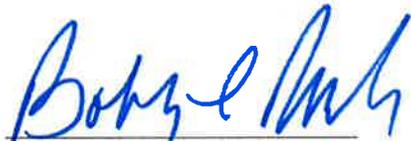
Sincerely,

DIANA DEGETTE
Member of Congress

JERROLD NADLER
Member of Congress

JAMES P. MORAN
Member of Congress

JANICE D. SCHAKOWSKY
Member of Congress



BOBBY L. RUSH
Member of Congress



KEITH ELLISON
Member of Congress.



RAUL M. GRIJALVA
Member of Congress



BARBARA LEE
Member of Congress



CHARLES B. RANGEL
Member of Congress



CHELLIE PINGREE
Member of Congress



LOUISE MCINTOSH SLAUGHTER
Member of Congress



MAZIE K. HIRONO
Member of Congress



ROSA L. DELAURO
Member of Congress



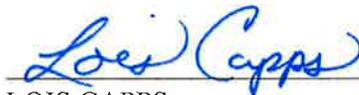
EDWARD J. MARKEY
Member of Congress



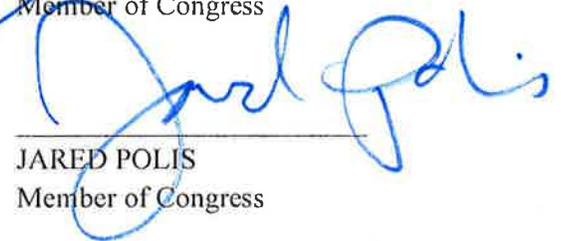
FORTNEY PETE STARK
Member of Congress



JOHN P. SARBANES
Member of Congress



LOIS CAPPS
Member of Congress



JARED POLIS
Member of Congress



EARL BLUMENAUER
Member of Congress



BRAD MILLER
Member of Congress