



July 30, 2021

**Board of Directors**

Alejandro Camacho  
Gilonne d'Origny  
Robert Glicksman  
Sekita Grant  
Michele Janin  
Alice Kaswan  
Thomas McGarity  
Joel Mintz  
Ajulo Othow  
Laurie Ristino  
Sidney Shapiro  
Amy Sinden  
Robert R.M. Verchick

Acting Director Kathleen Salyer  
Office of Land and Emergency Management  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

RE: Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Notice of Request for Public Comment; Docket Number EPA-HQ-OLEM-2021-0312

Dear Acting Director Salyer:

Thank you for the opportunity to comment on the Environmental Protection Agency's (EPA) Request for Public Comment on "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act" [hereinafter "RMP rulemaking"].

**Advisory Council**

Patricia Bauman  
Frances Beinecke  
Eula Bingham  
W. Thompson Comerford, Jr.  
Sally Greenberg  
John Passacantando  
Henry Waxman  
Robert Weissman

I am a Senior Policy Analyst with the Center for Progressive Reform (CPR), a nonprofit research and advocacy organization that works to build thriving communities on a resilient planet. CPR's mission is to educate, collaborate, and advocate with the goal of driving public policy reform through rigorous and accessible legal analysis. CPR operates with a network of more than 60 leading scholars in various legal academic fields and a professional staff of policy analysts, communication experts, and others. We work together to advance the idea that government regulations are key to social justice and planetary health. Our website is <https://progressivereform.org>.

I have been studying the federal regulatory system for over 13 years, including the role that the Small Business Administration's (SBA) Office of Advocacy plays in the regulatory decision-making process. Responses to the comments below may be sent to me at [igoodwin@progressivereform.org](mailto:igoodwin@progressivereform.org).

I am writing now regarding my concerns about the role the SBA Office of Advocacy might play in the development of any rulemaking that emerges from the RMP action. These concerns stem from the

fact that the SBA Office of Advocacy has historically operated to weaken environmental, public health, and safety rules, and that these are often contrary to the interests of most of the small business stakeholders affected by the particular regulation at issue.<sup>1</sup>

Significantly, these problematic dynamics were on full display when the SBA Office of Advocacy's intervened in the 2017 RMP rulemaking, including in particular the Small Business Advocacy Review (SBAR) review panel it helped convene in 2015. The "small entity representatives" that participated in that SBAR review panel included powerful industry lobbying associations such as the Gas Processor Association (GPA), National Association of Chemical Distributors, American Coatings Association, American Fuel and Petrochemical Manufacturers (AFPM), the Society of Chemical Manufacturers & Affiliates (SOCMA), and the American Chemistry Council (ACC).<sup>2</sup> The ACC's participation was particularly alarming given that its members at the time included some of the largest multinational corporations in the world, such as Chevron Corporation, DuPont, Koch Industries, Halliburton, Royal Dutch Shell, and Dow Chemical Company.

The SBA Office of Advocacy has long been in need of reform of how it operates – both to make its interventions in rulemakings more consistent with the public interest and so that it better serves the unique interests of real U.S. small businesses.<sup>3</sup>

If the EPA pursues a rulemaking as a result of the RMP action, we anticipate that it will soon begin working with the SBA Office of Advocacy to organize SBAR panel in conjunction with that rulemaking. Accordingly, we call on the Biden administration to take advantage of this opportunity to begin reforming its small business outreach efforts consistent with the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act.

Specifically, the EPA should work with the SBA Office of Advocacy to take the following steps to reform the SBAR panel process:

- Prohibit inclusion on the SBAR panel of any small entity representatives associated with national trade associations that do not have as their primary purpose representing the interests of small businesses; and
- Commit to completing the SBAR panel process in a timely manner.

---

<sup>1</sup> SIDNEY SHAPIRO & JAMES GOODWIN, DISTORTING THE INTERESTS OF SMALL BUSINESS: HOW THE SMALL BUSINESS ADMINISTRATION OFFICE OF ADVOCACY'S POLITICIZATION OF SMALL BUSINESS CONCERNS UNDERMINES PUBLIC HEALTH AND SAFETY (Ctr. for Progressive Reform, 2013), *available at*

[http://progressivereform.net/articles/SBA\\_Office\\_of\\_Advocacy\\_1302.pdf](http://progressivereform.net/articles/SBA_Office_of_Advocacy_1302.pdf); RENA STEINZOR ET AL., THE SMALL BUSINESS CHARADE THE CHEMICAL INDUSTRY'S STEALTH CAMPAIGN AGAINST PUBLIC HEALTH (Ctr. for Progressive Reform, 2015), *available at* [https://cpr-assets.s3.amazonaws.com/documents/Small\\_Biz\\_Charade\\_Silica\\_1501.pdf](https://cpr-assets.s3.amazonaws.com/documents/Small_Biz_Charade_Silica_1501.pdf).

<sup>2</sup> See U.S. ENVTL. PROTECTION AGENCY ET AL., FINAL REPORT OF THE SMALL BUSINESS ADVOCACY REVIEW PANEL ON EPA'S PLANNED PROPOSED RULE RISK MANAGEMENT MODERNIZATION RULE 18-19 (2016), *available at* <https://www.regulations.gov/document/EPA-HQ-OEM-2015-0725-0032> (Table 3).

<sup>3</sup> U.S. GOVT. ACCOUNTABILITY OFF. SMALL BUSINESS ADMINISTRATION: OFFICE OF ADVOCACY NEEDS TO IMPROVE CONTROLS OVER RESEARCH, REGULATORY, AND WORKFORCE PLANNING ACTIVITIES (GAO-14-525), *available at* <https://www.gao.gov/assets/gao-14-525.pdf>; James Goodwin, *The GAO's Scathing Report on the SBA Office of Advocacy: 15 Big Revelations*, CPRBLOG, July 28, 2014, <https://progressivereform.org/cpr-blog/the-gao-s-scathing-report-on-the-sba-office-of-advocacy-15-big-revelations/> (last visited July 30, 2021).

In addition to these SBAR panel process reform, the EPA and the SBA Office of Advocacy should develop and implement an outreach strategy to obtain the views of small businesses that could potentially *benefit* from a stronger RMP rule. These might include small businesses located within the worst-case chemical release vulnerability zone of one or more RMP-regulated facilities that have had their operations disrupted by a disaster at one of those facilities. Or they might include small businesses that are developing innovative safer alternative chemicals, which might become more widely used in response to a stronger RMP rule.

For too long, the EPA and the SBA Office of Advocacy have operated in a manner that has reinforced the mistaken impression that small businesses are monolithic and inevitably harmed by stronger regulatory protections. A future RMP rule underscores that the reality is quite different. To better appreciate this, however, the EPA and SBA of Advocacy must reform their approach to incorporating small business considerations into the rulemaking process.

Undertaking the reforms outlined above is important. Better accounting for the diverse impacts of regulations will lead to better outcomes for the public in general, and small businesses in particular.

I appreciate your attention to these recommendations, and I look forward to working with you on their development and implementation.

Sincerely,

**James Goodwin**

Senior Policy Analyst

Center for Progressive Reform