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To: OIRA_BC_RPT@OMB.EOP.gov
cc: darbuckl@OMB.EOP.gov, Jeff.Shane@ost.dot.gov, Sam.Bonasso@rspa.dot.gov
Subject: Draft 2004 Report to Congress

Original forwarded via first class mail

[IMAGE][IMAGE]

May 14, 2004

Ms. Loraine Hunt
Office of Information and Regulatory Affairs
Office of Management and Budget
NEOB Room 10202
Washington, DC 20503

Re: Draft 2004 Report to Congress on the Costs and Benefits of Federal Regulations;

[69 FR 7987; February 20, 2004]

Dear Ms. Hunt:

I am writing to express my concern about the impact of an agency failing to take timely regulatory action, something that has apparently not been considered in cost and benefit considerations and analyses. Let me explain by presenting a few facts for background.

The Research and Special Programs Administration (RSPA) of the Department of Transportation manages an extensive regulatory program for the safe transportation of hazardous materials (known globally as dangerous goods). A significant distinction between RSPA's regulations and those of other regulatory agencies (except FDA) is the fact that a business entity may not ship or transport a hazardous material unless a regulation exists allowing such transportation. For example, air bag inflator modules for automobiles are hazardous materials. They may not be offered for transportation in commerce unless a regulation (or a temporary exemption) provides for their transportation. Estimates as high as one trillion dollars of our GNP have some relationship to hazardous materials transportation,

including all petroleum products, Department of Defense ammunition, nuclear materials, drugs, medical gases, and thousands of other items essential to our economy and well being.

Several years ago, the United States was enjoying a positive trade balance in chemicals of more than twenty billion dollars. Now the balance is minus nine billion dollars. In order to facilitate the movement of our goods overseas, we must minimize the impediments that could affect their timely delivery. A current problem is the speed with which RSPA handles its HM-215 Dockets for harmonization with recommendations of the United Nations Committee of Experts on the Transport of Dangerous Goods, the International Maritime Organization, and the International Civil Aviation Organization along with those of Canada and Mexico as appropriate.

On July 31, 2003, RSPA published a final rule (RIN 2137-AD41) adopting several hundred adjustments to its regulations with an effective date of October 1, 2003. We promptly appealed the language in one paragraph of the rule that we believe was adopted in error. I have been attempting to follow-up on RSPA's action to correct the error and was recently advised the action is now declared to be "significant" which triggers a number of time-consuming review and analysis requirements under the Regulatory Flexibility Act (RFA).

Early last year, there were more changes made to international requirements, and RSPA established a new internal docket identified as HM-215G. We were hoping that a notice of proposed rulemaking would be published by now thereby allowing time for publication of a final rule well before the international requirements become effective next January. It is apparently not going to happen because somebody, I assume at OMB, has decided regulatory actions addressing hazardous materials transportation are significant.

We do not dispute the merits of the RFA. However, we do question the merit of a determination that automatically designates as "significant" for purposes of RFA a review of all hazardous materials rulemakings, especially those aimed at international harmonization.

If the United States fails to stay aligned with international standards for the transport of dangerous goods, we will encounter non-tariff barriers to trade of our own making with an increasing frequency. It was to avoid such problems that Congress called on the Secretary of Transportation to "...participate in international forums that establish or recommend mandatory standards and requirements related to transporting hazardous material in international commerce." [49 U.S.C. 5119 (a)]

The Dangerous Goods Advisory Council is a not-for-profit organization of 175 members, 21 of which are trade associations representing thousands of businesses. Our mission is to promote uniform and effective regulations for the safe transportation of dangerous goods, and to provide extensive training programs in relation thereto.

I hope you are able to find some space in your report for the concerns I have raised above. We have not agreed with all the actions taken by RSPA in recent years; however, in regard to international conformity matters, we have been satisfied with virtually all the content, but not the timeliness, of regulations that are essential for the delivery of our products to foreign destinations.

I would be delighted to discuss this subject with you further if you have any questions or a need for further detail. My telephone number is 202-289-4550.

Sincerely,

[IMAGE]

Alan I. Roberts

President

[IMAGE][IMAGE]

cc: Mr. Jeffrey Shane
Undersecretary for Policy
U.S. Department of Transportation

Mr. Sam Bonasso, Administrator
Research and Special Programs Administration
U.S. Department of Transportation

Mr. Donald R. Arbuckle
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