June 12, 2012

The Honorable Darrell E. Issa  
Chairman, Committee on Oversight and Government Reform  
2157 Rayburn House Office Building  
Washington, DC 20515

The Honorable Jim Jordan  
Chairman, Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending  
2157 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Issa and Chairman Jordan:

I am writing in response to your May 16, 2012 letter regarding existing and proposed regulations that negatively impact the economy and job growth and maintenance in the U.S. chemicals industry. Your request raises the critical issue of how our Federal regulatory structure can continue to promote job creation and maintenance and support our economic recovery.

The American Chemistry Council (ACC) represents America's chemical manufacturers. We believe our industry's ability to compete in a growing global market, drive innovation throughout the value chain, and preserve and create the high-skilled, high-paying domestic manufacturing jobs of the future is directly related to our ability as a nation to strike the right balance with respect to government regulation. We share your concern about the negative impact of recent and new regulatory proposals on the nascent economic recovery and American jobs.

I. Improvements in Chemical Assessments

ACC believes that in order to truly reform our nation’s regulatory system, it is necessary to not only address individual rules, but also fix the underlying deficiencies in the regulatory process so that proposed rules are made more transparent, fully-informed, and rational from the start. Our nation’s chemical regulatory system routinely suffers from a lack of quality standards for choosing and applying scientific information. This, in turn, fosters regulations that do not reflect established science, and that harm innovation, investment, and job creation. The problems are particularly prevalent in the multiple chemical assessment programs employed by our regulatory system, especially the Environmental Protection Agency’s (EPA) Integrated Risk Information System (IRIS) and the National Toxicology Program’s (NTP) Report on Carcinogens (RoC).

In April 2011, the National Academies of Science (NAS) reviewed the draft IRIS assessment of formaldehyde and concluded that EPA had failed to provide adequate scientific evidence to support the conclusions drawn in many assessments, not just the assessment of formaldehyde.
The recommendations for improvement made by the NAS were followed closely by a requirement from Congress that EPA take specific measures to address the shortcomings in IRIS and that NTP take similar steps to improve its RoC. To date, EPA has been extremely slow in implementing the necessary and permanent changes to its IRIS program. This delay not only creates further confusion among the public, but also poses significant economic risk to hundreds of thousands of Americans employed in the chemicals industry.

To improve the chemical assessment process, ACC believes that three major upgrades are needed:

**Improve Scientific Policies.** There are four areas of scientific policies and procedures that need to be improved:

**A. Design and Data Acquisition.** The upfront design of hazard and risk assessments needs to be transparent and specify the key issues that are to be assessed and the specific methods, assumptions, and evaluation procedures that will be utilized. Input from the research community and stakeholders should be part of this activity, so that the most up-to-date data can be obtained and the most relevant methods can be considered and used.

**B. Data Evaluation.** Consistent and scientifically objective data evaluation protocols need to be established and used to evaluate studies so that the same procedures are used irrespective of who conducted the study, where it was conducted, or who funded it.

**C. Data Integration and Weight of Evidence.** All hazard and risk assessments must be based on a clear and consistent framework that takes into account and integrates all relevant data and information and gives the greatest weight to information from the most relevant and highest quality studies. Default, overly conservative assumptions that are outdated must be replaced with actual data and 21st century knowledge of how chemicals act in the body at environmentally relevant exposures.

**D. Characterization of Hazards and Risks.** The characterization must provide a full picture, not just a worst case or upper bound estimate, or an estimate based on one set of default or conservative assumptions. When assumptions and defaults are used, the assessments need to explicitly document the impact of these assumptions and also present results using scientifically plausible alternatives.

**Improve Independent Scientific Peer Review.** Today, agencies can steer the review process in a manner that focuses the peer review too narrowly and stymies discourse. These procedures need to be improved to assure that both the reviewers and the charge questions posed to reviewers are fully independent from the program office that developed the assessment. Peer reviewers need to be selected first and foremost based upon their expertise. Panels must have the range of expertise needed to review the subject matter and panels must be balanced in terms of perspectives -- equal consideration needs to be given to industry experts. In addition, the process must guarantee robust scientific exchange by the reviewers that includes adequate consideration of public comments and analyses by outside experts.
Ensure Accountability. At present, there is no “honest broker” to oversee and ensure that assessments adequately incorporate peer reviewers’ recommendations and public comments. The current system leaves the disposition of these recommendations up to the agency authors and the program office itself. This has proven very problematic, as legitimate scientific concerns are ignored or glossed over or assessments are stalled because the program offices do not want to follow recommendations. An independent accountability procedure must be installed.

The goal of a scientifically accurate, efficient, and responsible chemical assessment system should be a priority for our regulatory system. While this may be a longer-term action, negative impacts on jobs and the economy can also be reduced in the short term by amending or rescinding inefficient programs and proposed regulation.

II. U.S. Green Building Council’s (USGBC) Leadership in Environmental Energy and Design Program (LEED)

The Energy Independence and Security Act of 2007 requires the General Services Administration (GSA) to review and recommend green building rating systems for federal agency use to help the federal government achieve greater energy efficiency. GSA has previously recommended USGBC’s LEED standards, and today the Federal government is a major user of the LEED system, in many cases mandating the use of the enhanced “LEED Silver” lever. ACC believes that LEED’s standard development process fails to meet even basic access, balance, and transparency requirements. In fact, LEED standard development fails to meet even minimal requirements for being “consensus based,” as required for Federal adoption of private standards.

LEED seeks to address all aspects of environmental and energy performance of buildings, and increasingly, a healthy indoor environment for occupants. Achieving these worthy goals is necessarily a complex undertaking, one which requires a fair and transparent process, based in science and driven by data, so that all building materials and products can complete on an even playing field. Unfortunately, the process used to develop LEED 2012 falls far short of the mark. In successive drafts, appearing sometimes only days apart, LEED has taken wildly divergent approaches on the core element of material choice.

As written, the LEED 2012 credits directly threaten to remove the use of dozens of useful materials and hundreds of proven building products, all while driving up building costs to the taxpayer and eliminating jobs. The credits also operate in an equally damaging but less obvious way by implying to the market at large that materials otherwise at the forefront of improving environmental performance and occupant safety in buildings should no longer be used. The credits encourage or reward elimination of chemicals in building products without regard to how they help energy-efficient building products perform their purpose. Moreover, ACC is fundamentally troubled that the Federal government is requiring its buildings to achieve certification from a system which is developed through a process that is not sufficiently open or transparent, and does not maintain an appropriate balance of interests or an appeals process.
III. U.S. Customs and Border Protection (CBP) Ruling H026715

In the past year, Federal agencies have taken modest initial steps towards more consistent and effective retrospective review of their regulations. However, these same agencies continue to demonstrate a lack of willingness to properly assess the financial and employment impacts of current proposed rules.

This deficiency can be seen in a variety of proposed rules from different agencies. For example, CBP has recently announced the enforcement of a ruling (CBP HQ Ruling H026715) that threatens to pose a significant unnecessary burden and complication to U.S. trade firms through affecting the routine movement and reuse of containers that return to the U.S. These containers, known as “Instruments of International Traffic (IIT),” are considered empty even when small amounts of residue remain in them after their return. This is because typically, upon its return, the same product is loaded in the IIT again. Although this residue has no commercial value to the exporter or the purchaser, the CBP ruling would force U.S. exporters and carriers to file a “manifest” and make formal or informal “entry” as if the residue were a non-U.S. product being imported into the United States. The ruling not only raises costs for U.S. trade firms, but also negatively impacts potential jobs. In addition to requiring that U.S. firms pay additional fees to customs brokers for manufacturing these residues, the ruling would force exporters to outsource the washing of the container rather than have it done in the U.S. in order to avoid the manifest burden. It is unclear if CBP estimated the ruling’s impact on U.S. export trade or conducted any form of cost/benefit analysis whatsoever.

Rather than streamline and minimize regulatory burdens, CBP’s ruling creates more unnecessary cost and stifles economic growth. ACC and its members highly value the elimination of inefficient and unnecessary regulatory differences between the U.S. and other countries. For this reason, ACC believes that the CBP ruling deserves a full and robust interagency review by DHS or the new-OIRA chaired interagency Working Group. Until then, CBP should indefinitely delay the enforcement of this ruling.

IV. Environmental Protection Agency (EPA) Clear Air Act Proposed Rules

EPA has recently proposed regulations for which it has routinely ignored associated costs, onerous and unnecessary requirements, and the proposals’ relationship to existing regulation. For example, in January 2012, EPA proposed National Emissions Standards for Hazardous Air Pollutants (NESHAPs) for Group IV Polymers and Resins, Pesticide Active Ingredient Production, and Polyether Polyols Production. ACC strongly objects to the regulation’s proposed monitoring requirements for pressure relief devices (PRDs) at facilities. EPA has not only failed to justify the onerous requirements, but even the Agency itself has acknowledged that the costly control monitors required for PRDs will have no environmental benefit!

In recent proposals, EPA has promoted an approach to regulation under the Clean Air Act utilizing “uniform standards” for particular equipment and processes. ACC believes that this
approach will only serve to exacerbate existing duplicative or disjointed requirements. The numerous logistical issues relating to the promulgation and implementation of the uniform standards render EPA’s assertion that they will “promote consistency among technical requirements for similar emission points in different source categories”1 effectively null. In addition to the implementation issues, EPA has also failed to provide an adequate legal basis for the uniform standard approach in any of its proposed rules. The following proposed regulations are prime examples of these serious flaws:

- EPA’s proposed NESHAP for Petroleum Refineries and National Uniform Emission Standards for Heat Exchange Systems. Although the proposal was developed based on refineries, it will be also be applicable to industries and sectors outside petroleum refineries. As one can imagine, the failure to consider all future reporting subparts in the development of the uniform standard has resulted in a proposed standard that is completely inappropriate for industries other than petroleum refineries, such as chemical facilities.
- EPA’s proposed National Uniform Emission Standards for Storage Vessel and Transfer Operations, Equipment Leaks, and Closed Vent Systems and Control Devices, as well as the proposed Revisions to the National Uniform Emission Standards General Provisions. In addition to the logistical issues associated with promulgation and implementation, there are significant cost concerns with the proposals’ requirements for monitoring of PRDs, connectors, open-ended lines, and bypass valves, and its stringent specifications for tank roof landings. However, these cost concerns were never addressed by EPA and have never been reviewed by the White House Office of Management and Budget. The crucial step of interagency review was foregone because no facilities are currently subject to these rules, even though their costly requirements may apply to chemical facilities in the future.

ACC has additional concerns with proposed regulations that affect other programs under the Clean Air Act, including:

- EPA’s proposed NESHAP for Chemical Manufacturing Areas Sources. This would require certain synthetic minor sources to obtain Title V permits. As these minor source facilities already have enforceable state and local permits (many of which have been reviewed by EPA), this proposed rule would create an unnecessary permitting burden on facilities. Additionally, the required Title V permits would reduce the international competitiveness of domestic facilities by removing a critical operational flexibility. This flexibility is essential in allowing our nation’s facilities and manufacturers to compete in a global market.
- EPA’s proposed Prevention of Significant Deterioration and Title V Greenhouse Gas (GHG) Tailoring Rule Step 3, GHG Plant-wide Applicability Limitations and GHG Synthetic Minor Limitations. ACC continues to question the legality of EPA’s tailoring

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1 77 Fed. Reg. 17898, March 26, 2012
rule for GHGs under the PSD and Title V permitting programs. If facilities were required
to undergo costly and time-intensive GHG permitting, their ability to contribute to the
economy’s nascent recovery would be severely crippled.

- EPA’s Standards of Performance for Greenhouse Gas Emissions for New Stationary
  Sources: Electric Utility Generating Units. This proposed rule represents a dramatic and
  fundamental change to the scope and application of the New Source Performance
  Standard (NSPS) program under the Clean Air Act that carries long-term implications for
  energy and environmental policy in the United States. By EPA’s own admission this rule
  is not needed because the affected can already meet the proposed performance standard
  and because EPA expects that no other affected electrical generating units will be
  constructed in the foreseeable future for economic reasons.

V. Occupational Safety and Health Administration (OSHA) Advanced Notice of
Proposed Rulemaking (ANPRM) for Combustible Dust

ACC has also identified concerns with an OSHA proposed rulemaking under development:

- ANPRM for Combustible Dust. To date, OSHA has not met its statutory obligation for
  rulemaking by demonstrating that combustible dust poses a significant risk in the
  chemical manufacturing sector. It is clear that OSHA can already meet its safety
  objectives for combustible dust by enforcing existing rules that are relevant to the
  elements that contribute to combustible dust fires and explosions. Thus, the proposed
  rule will only add onerous requirements to existing regulation.

The above examples are only a select few of a broad array of existing and proposed regulation
that have the potential to impact job growth and the economy. As our nation continues its
economic recovery, it is essential that the Federal government avoid imposing unnecessary costs
and burdens.

If we can provide any additional information, please let me or my staff know.

Sincerely,

Cal Dooley