Dēmos | AlaskaPIRG Standing Up To Powerful Interests

ALASKA LIVES AT RISK:
THE LOCAL IMPACT OF FEDERAL "REGULATORY REFORM" PROPOSALS

KEY FINDINGS

The United States Congress is currently considering so-called "regulatory reform" legislation that would add new bureaucratic hurdles to stall and, in some cases, stop the creation of new safeguards and standards that hold corporations accountable and protect the public. According to our analysis, the result would be demonstrable harm for the people of Alaska.

KEY "REGULATORY REFORM" PROPOSALS INCLUDE:

- Broad regulatory moratoria proposals such as the **Regulatory Time-Out Act of 2011** (S. 1538) and the **Regulatory Freeze for Jobs Act of 2012** (H.R. 4078)
- **The Regulations from the Executive in Need of Scrutiny** (REINS) Act (H.R. 10) (S. 299)
- **The Regulatory Accountability Act** (RAA) (H.R. 3010) (S. 1606)
- **The Regulatory Flexibility Improvement Act** (RFIA) (H.R. 527) (S. 1938)

In Alaska, allowing food processors to delay one year before using new standards from the U.S. Food and Drug Administration for safe handling of produce will cause approximately*:

- 20,000 local cases of foodborne illness—more than twice the population of Sitka

In Alaska, delaying the Affordable Care Act's ban on health insurance companies discriminating against patients with pre-existing conditions for one year will put:

- 3,090 newly diagnosed cancer patients at risk of being denied health insurance

*based on latest-available state data

WHAT NO INDIVIDUAL CAN DO ALONE: PROTECTING AMERICA

At key points in our nation's history, citizens have successfully demanded that our government do what no individual can do alone: set standards and safeguards to hold large corporations accountable to the public interest. Americans are safer, healthier and more prosperous today because of the strong American system of safeguards designed to stop corporations from cutting corners at our expense. Our daily lives are filled with examples of the American regulatory system at work. For example, we no longer have to fear that the meat we buy is actually—as Upton Sinclair described in his 1906 book, *The Jungle*—just "guts and garbage" swept off the meatpacking plant floor and sold as "potted ham." That is because citizens pressured Congress to pass laws that transformed the entire industry and are still protecting us today, the Meat Inspection and the Pure Food and Drug Acts of 1906.

For most of our history, the United States has been the world leader in setting a system of high and distinctly American standards for companies that want to do business here. Perhaps the most dramatic example of the U.S. leading the world in safeguarding our citizens came in 1960, when an FDA pharmacologist, Dr. Frances Kelsey, refused to let the U.S. follow 46 countries in allowing the sale of thalidomide, a drug for infants, children and pregnant women. Dr. Kelsey faced sustained opposition from the drug's maker, but in the end, America was vindicated: over 12,000 birth defects were linked to the drug worldwide—but because of U.S. safeguards, only 17 Americans were affected.[1]

Unfortunately, today, America's proud tradition of setting innovative environmental and business standards is threatened by industry-supported legislation that could effectively end our government's ability to respond to new threats to the public or to correct unproductive imbalances in the marketplace. Instead of leading the world so that American products can claim the highest standards of quality, these bills would have us compete with developing nations for the most lax public health and safety standards

American citizen activism helped pass the Clean Air Act of 1970, which still protects us today. In fact, in 2010 alone, the Clean Air Act prevented:

- 160,000 cases of premature death
- 130,000 heart attacks
- 1.7 million asthma attacks
- 13 million lost work days[2]

LEGISLATION ERECTING BARRIERS TO NEW STANDARDS & SAFEGUARDS: REINS, RAA, AND RFIA

The following section describes some of the key bills that, if passed, would erect bureaucratic impediments to the creation of new standards and safeguards: variations on a broad regulatory moratorium, the Regulations from the Executive in Need of Scrutiny (REINS) Act, the Regulatory Accountability Act (RAA), and the Regulatory Flexibility Improvement Act (RFIA). REINS, RAA, and RFIA have cleared the U.S. House and await action in the U.S. Senate. Broad regulatory moratoria proposals are under consideration in both houses

Broad regulatory moratoria proposals. Moratoria proposals such as the Regulatory Time-Out Act of 2011 (S. 1538) and the Regulatory Freeze for Jobs Act of 2012 (H.R. 4078) would create broad prohibitions against agencies issuing or updating public safeguards for a set time period, ranging between 1 and 2 years or until the level of unemployment drops to a pre-specified level.

The REINS Act. The REINS Act would thwart implementation of new public safeguards and industry standards by requiring both the House and Senate to approve all major regulations in 70 days, an impossibly short timeframe. Rules that are not approved would become void automatically, despite the years of rigorous science and public comment that go into crafting them. Thus it would empower either chamber to unilaterally stop the implementation of important laws that Congress has already passed. This includes decades-old American laws that have overwhelming public support—such as the Clean Air Act and the Food, Drug, and Cosmetic Act.

The Regulatory Accountability Act. The RAA would delay the creation and weaken the substance of new rules by forcing agencies to prioritize the interests of industry over the public. It would require that government create rules that are "least costly" for the regulated businesses, even if an alternative rule would be less costly for the public, in the form of lives saved and harms prevented. This is a profound change that overrides 25 existing statutes, including the Clean Air Act, the Clean Water Act, and the Occupational Safety and Health Act, designed to prioritize public health and safety while still taking into account compliance costs for businesses.

In its letter to the House Judiciary Committee on the RAA, the American Bar Association (ABA) Section of Administrative Law and Regulatory Practice, the most authoritative body of experts in this area, wrote "[f]or some two decades, many administrative lawyers have voiced concerns about the increasing complexity of rulemaking and have been urging Congress not to add unnecessary analytical requirements to the…rulemaking process." Rather than addressing these fundamental concerns, the RAA does exactly what the experts warned against, by adding more than 60 new analytical requirements to the law guiding the rulemaking process, including mandating agencies to make nearly impossible determinations such as the "indirect costs" or the "cumulative costs and benefits" of a proposed regulation. In addition, the bill greatly increases the power of the courts to second-guess the experts in the rulemaking process by expanding the issues on which courts could intervene. One expert estimates that enactment of the RAA would delay the creation of new rules by two to three years,[3] meaning a loss of 71,400–107,100 American lives in the case of just one delayed rule: the particulate matter pollution limit.[4]

The Regulatory Flexibility Improvement Act. The RFIA would slow down the creation of new standards and safeguards by adding unnecessary, time-consuming steps to the review process. Like the RAA, it would require agencies to make nearly impossible determinations of "indirect costs" associated with regulations as well as a set of possible alternatives to any proposed regulation.

Lobbyists for Regulatory Reform. It is important to recognize the interests that have driven the "regulatory reform" agenda to date. In a detailed analysis of supporters of the REINS Act, the most extreme of the proposals, the non-partisan research group Public Citizen found that the energy industry was the single biggest force lobbying for the bill.[5] This includes electric utilities, coal, oil and gas

companies. Many of these companies have expressed opposition to new pollution standards. However, REINS, RAA, and RFIA are not tailored to any specific area of regulation. Thus, they would delay standards indiscriminately across all industries and sectors of our economy, even reaching rules that are supported by the regulated entities—for example, the anti-food contamination standards that the farm lobby currently supports as a means to avoid costly recalls.[6]

THE IMPACT ON ALASKA FAMILIES OF DELAYING NECESSARY SAFEGUARDS

Impact of Delaying Rule Making Our Food Safer: 20,000 Food-Poisoned Alaskans Per Year

Despite the creation of a more robust system of protections since Upton Sinclair's time, there continue to be gaps in the United States' food safety systems. Experts estimate that each year 128,000 Americans are hospitalized due to a foodborne illness, and 3,000 die.[7] In Alaska, nearly 50,000 local residents fall ill from produce-related illnesses each year.[8] Many of the recent outbreaks are, in part, the result of new developments in the farming industry that present new threats to the consumer and require an updating of existing safeguards. In 2006, more than 200 illnesses and three deaths were linked to bagged spinach contaminated with *E. coli*. Packaged greens represent an innovation by the food industry that meets a consumer need for convenience, but also carries with it new dangers. By cutting and mixing spinach into individual bags, a single contaminated plant now contaminates bags purchased by multiple consumers—whereas, before the contamination would have sickened a single consumer.

As in previous eras, the steady drumbeat of high profile incidents involving food contamination due to a lack of industry standards led to action. Congress passed and the President signed into law the FDA Food Safety Modernization Act (FSMA) in January 2011. While some provisions of the law have taken effect, the provisions of the law requiring farmers to create checklists to assure that safety procedures are followed in the production, harvesting, handling and packing of produce will not take effect until the FDA issues a rule detailing the new requirements for the industry.[9]

Each year that we delay the creation of this standard means additional suffering. While better rules will not eliminate all foodborne illnesses from produce, if half of the illnesses due to contaminated produce can be eliminated—as the FDA has estimated is possible for a comparable rule for fish[10]—then **each year of delay would result in approximately 20,000 Alaska residents falling ill**[11]**—comparable to the entire population of Sitka being poisoned by bad produce twice every year.**[12]

Impact of Delaying Pre-Existing Condition Rule: 3,090 Alaska Cancer Patients' Health Coverage At Risk Per Year

Today in Alaska, for those who do not have health insurance coverage through their employer and have a pre-existing health condition, it can be challenging to get coverage. That is because health insurance companies concerned about their bottom line often charge more or refuse to cover people who have a pre-existing condition and are therefore likely to use more health care services, making them more expensive to cover.

Congress recognized this problem when it drafted and passed the Patient Protection and Affordable Care Act. Under the law, by 2014 the federal government must issue rules requiring insurers to offer coverage without regard to patients' health history. This rule will be particularly important for people with serious medical conditions.

In Alaska, there are 3,090[13] new cases of cancer each year. For each year that the rule protecting patients' right to purchase health insurance is delayed due to new red tape, **these 3,090 Alaskans are at risk of being denied health insurance coverage because they have cancer.**

CONCLUSION

Alaska citizens have much to lose from the passage of legislation that would delay the creation of protections for their food and health care. For each year that new safeguards are delayed, they will suffer as many as 20,000 preventable cases of foodborne illness and they will see 3,090 newly diagnosed cancer patients at risk of being denied health insurance coverage.

Demos and U.S. PIRG wish to thank Earthjustice, the American Lung Association, the Clean Air Task Force and the Energy Foundation for the previously unpublished state level data on the health impacts of stricter controls on particulate matter included in this report.

ENDNOTES

[1] Ballard Campbell, *Disasters, Accidents and Crisis in American History* (New York: Facts on File, Inc, 2008).

[2] U.S. Environmental Protection Agency, "The Benefits and Costs of the Clean Air Act from 1990 to 2020," March 2011, http://www.epa.gov/cleanairactbenefits.

[3] Sidney Shapiro, Testimony on H.R. 3010, the Regulatory Accountability Act of 2011 before the House Committee on the Judiciary, October 25, 2011, http://judiciary.house.gov/hearings/pdf/Shapiro%2010252011.pdf.

[4] There are 35,700 premature deaths per year, due to failure to meet toughr standards. American Lung Association, Clean Air Task Force, and Earth Justice, "Sick of Soot: How the EPA Can Save Lives By Cleaning Up Fine Particle Air Pollution," http://www.catf.us/resources/publications/view/159.

[5] Amit Narang and Taylor Lincoln, "Decoding the Bill," Public Citizen, August 2011, http://citizen.org/documents/decoding-the-bill.pdf.

[6] The organizations representing fresh produce growers opposed the Food Safety Modernization Act, because it did not create standards that were strict enough. See United Fresh, Letter to the Senate, November 18, 2010, http://www.unitedfresh.org. The grocery industry also supports stricter standards, see Food Marketing Institute Press Release, "Food Safety Modernization Act Passes For the Third Time in U.S. House of Representatives," December 2010, http://www.fmi.org/news_releases/index.cfm?fuseaction=mediatext&id=1191.

[7] Elaine Scallan, et al, "Foodborne Illness Acquired in the United States—Unspecified Agents," *Emerging Infectious Diseases*, 17(1) (January 2011): 16-22.

[8] In Alaska, approximately 50,000 people a year will be sickened by foodborne illness from produce. See Robert Scharff, "Health Related Costs from Foodborne Illness in the United States," Produce Safety Project at Georgetown University, March 2010, http://www.producesafetyproject.org/admin/assets/ files/Health-Related-Foodborne-Illness-Costs-Report.pdf-1.pdf. In 2011, the Centers for Disease Control updated their methodology for calculating national incidents of foodborne illness. However, state-by-state data based on the 2011 figure is not yet available. Because the change in methodology resulted in a lower figure for 2011, forthcoming state-level estimates are expected to be lower.

[9] The FDA Food Safety Modernization Act (Pub. Law 111-353) requires the FDA to create a rule to "establish science-based minimum standards for safe production and harvesting of. . . fruits and vegetables." The Act required that a draft of the rule be available for public comment in January of this year and that the agency begin enforcing the final rule one year after the period for public comment has closed, approximately March of 2013.

[10] For FDA's estimate of the number of illnesses that would be prevented by the application of a similar rule, the Hazard Analysis and Critical Control Points (HACCP) Standard for seafood processors, see Federal Register, December 18, 1995, pp. 65185-7.

[11] Robert Scharff, p. 15. Of the close to 50,000 cases of foodborne illness from produce each year in Alaska, the produce rule would prevent approximately half, over 20,000, of these cases. Figures based on latest available state data. Forthcoming state-level figures for total number of illnesses are expected to be lower based on methodological change described in endnote 8, above.

[12] There were 8,881 inhabitants of Sitka in 2010, http://quickfacts.census.gov/qfd/states/02/0270540.html.

[13] American Cancer Society, "Cancer Facts and Figures 2011," http://www.cancer.org/acs/groups/content/@epidemiologysurveilance/documents/document/acspc-029771.pdf.

Dēmos

DĒMOS.ORG

220 Fifth Avenue, 2nd Floor
New York, NY 10001
p: (212) 633–1405
f: (212) 633–2105
info@dēmos.org

MEDIA CONTACT

Lauren Strayer,
Associate Director of Communications
p: (212) 389–1413
lstrayer@dēmos.org

AlaskaPIRG
Standing Up To Powerful Interests

AKPIRG

Matt Wallace,
Executive Director
P.O. Box 101093
Anchorage, AK 99510
p: (907) 278–3661
f: (907) 278–9300
matt@akpirg.org
www.akpirg.org