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The President has told administration heads, “Put on your track shoes. We’re going to run to the finish.” How much damage could Dudley do in that two-year sprint to the finish?

### The Race Is On

The White House is looking ahead to its last two years and is already planning an all-out assault. “[The president] told all of us, ‘Put on your track shoes. We’re going to run to the finish,’” Tony Snow told *Time*. “He’s going to be aggressive on a lot of fronts. He’s been calling all his Cabinet secretaries and telling them, ‘You tell me administratively everything you can do between now and the end of the presidency. I want to see your to-do list and how you expect to do it.’”

Snow added, “We’re going to try to be as ambitious and bold as we can possibly be.”

What would that mean for a Dudley-led OIRA? If Dudley put her track shoes on, what important safeguards would she run over? What would her footprints be?

### Risky Business: Risk Assessment Bulletin

One item still on the to-do list at OIRA is a proposed bulletin to create a one-size-fits-all policy for all agency risk assessments.

Risk assessments are important to many government activities, including but not limited to the crafting of new regulations. In a risk assessment, agency scientists and experts bridge the gap between the known and the unknown by applying their expert judgment and considering the weight of the scientific evidence to produce an estimate of risk that risk managers then use when making policy decisions.

Not long before announcing his resignation, previous OIRA administrator John Graham issued a

proposed bulletin to create a one-size-fits-all regimen for all risk assessments... whether it’s a NASA risk assessment determining what it would take to get a space shuttle up and back or an FDA risk assessment about the amounts of pesticide residue on food that are likely to harm human health.

The proposed risk assessment bulletin would threaten public protections in many ways, including the following:

- ▶ *Makes risk assessment less useful by replacing point estimates with mushy ranges.* Risk managers, such as regulators crafting new rules, need the risk assessors to produce a best estimate of the point at which health and safety are endangered. The OIRA bulletin would strip risk assessments of all utility—and invite endless litigation from businesses seeking to thwart new safeguards—by replacing point estimates with mushy, useless risk ranges.
- ▶ *Brings risk assessment down to the least common denominator by replacing worst case scenarios with misleading averages.* If you were climbing a ladder, would you prefer it to be set to hold the weight of the heaviest male or the average person? Risk assessments typically look for the worst-case scenario, such as the cancer risk to the person most exposed to a hazardous waste site or an “adequate margin of safety.” The OIRA bulletin would replace these conservative, precautionary approaches with a “central risk estimate.”

- ▶ *Induces paralysis by analysis by setting impossible requirements for risk assessments.* Risk assessment is the application of expertise and scientific judgment to the weight of the evidence. Especially in cases of long-latency, low-probability risks, a great deal of scientific judgment is involved (such as reading tumors, and compensating for weaknesses in epidemiological data). OIRA's bulletin would demand the impossible: that these assessments be *reproducible*, like a physics experiment. This requirement could cripple much risk-based regulation, such as chemical regulation.
- ▶ *Makes risk assessment blind to health risks.* The OIRA bulletin would force risk assessors to ignore studies that link exposures to early molecular events in the human body (precursors to irreversible illnesses like cancer) and instead focus only on studies showing fully-realized adverse health effects. The OIRA bulletin thus would fly in the face of reputable scientific opinion on the subject.

If allowed to become OIRA administrator, Dudley would be in a position to make this stark threat to health, safety, and the environment a tragic reality.<sup>1</sup>

### **Leaving the Public in the Dark: "Good" Guidance Practices Bulletin**

Another major item on the OIRA to-do list is a proposed bulletin to change the Administrative Procedure Act by executive fiat.

At the end of 2005, OIRA published a draft bulletin to change the way agencies put out guidance documents, general policy statements, interpretative rules, and other such informal statements. The bulletin purports to make agency guidance documents "more transparent, consistent, and accountable" by setting new requirements that include high-level review by senior agency staff of "significant" guidance documents and a lengthy review and approval process for any "economically significant" guidance.

Congress explicitly excluded guidance documents and interpretative rules from notice and comment requirements of the APA. This bulletin would effectively rewrite the APA by executive fiat.

Agencies use guidance and interpretations to inform the public, such as regulated industry, how it plans to implement the rules on the books. The guidance bulletin would delay this important information and would create perverse incentives for agencies not to publish such information at all.<sup>2</sup>

<sup>1</sup> For more information, see [www.ombwatch.org/regs/whitehouse/risk](http://www.ombwatch.org/regs/whitehouse/risk).

<sup>2</sup> For more, see [www.ombwatch.org/regs/whitehouse/guidance](http://www.ombwatch.org/regs/whitehouse/guidance).

Dudley is no stranger to paralysis by analysis. Such a burden on agencies, as presented by the guidance bulletin, would be right up her alley.

### **Safeguards at Stake: Regulations in the Pipeline**

Dudley would bring her radical anti-regulatory agenda to play at a critical time. Agencies are currently working on important new safeguards to address unmet needs for public health, safety, the environment, and the public interest.

Among the safeguards in the pipeline just waiting for a Dudley-led OIRA to gum up the works:

- ▶ Protections for mine workers, demanded in the aftermath of the Sago tragedy when Congress realized that initiatives taken off MSHA's to-do list could have averted the miners' deaths.
- ▶ Important protections to improve safety for automobiles, including improved roof strength and other features to protect occupants in rollover crashes.
- ▶ A review of the national ozone standard, required every five years by the Clean Air Act (although the Bush administration has ignored that mandate and had to be forced by a court to do its duty).
- ▶ Revision of the EPA approach to testing vehicles for determining their compliance with fuel economy standards, which are crucial to weaning America from its dependence on foreign oil.
- ▶ Additional safeguards against mad cow disease, such as prohibiting certain high-risk materials from the food supply and improving standards for inspecting machine-separated meat.

Dudley's hostility to regulation could lead to enormous new risks for the public if Dudley is allowed to take over the powerful Office of Information and Regulatory Affairs.

*Susan Dudley would put the public health, safety, and environment at unnecessary risk as OIRA administrator. That cost is too high.*



For more information, visit [www.citizen.org/dudley](http://www.citizen.org/dudley)