



**Opening Statement for the Honorable Linda Sanchez, Chairwoman Subcommittee on
Commercial and Administrative Law for the Oversight Hearing on Amending Executive Order
12866: Good Governance or Regulatory Usurpation?
February 13, 2007**

Over the last several weeks, I've been reading some very disturbing news reports and commentaries about an executive order issued last month by President Bush. The new Order substantially amends Executive Order 12866, an order that has guided the OMB regulatory review process for the last 13 years. This new Order requires agencies to identify specific "market failures" or problems that warrant a new regulation. Furthermore, agency heads are now required to designate a presidential appointee as an "agency policy officer" to control upcoming rulemaking.

In a sense, this Executive Order politicizes regulations, many of which were specifically created by experts to protect the health and safety of our citizens.

I am concerned that the main thrust of this new Order appears to shift control of the regulatory process from the agencies – the entities that have the most substantive knowledge and experience – to the White House.

The primary purpose of this regulatory process is to provide guidance and interpret technical policies, often at the request of industry.

Unfortunately, we don't know what prompted President Bush to undertake a major overhaul of this proven process.

There is some speculation as to the Administration's reasoning. The New York Times, for example, reported that this new Executive Order "strengthens the hand of the White House in shaping rules that have, in the past, often been generated by civil servants and scientific experts."

Others claim this is just another clandestine "power grab" by the Administration.

These thoughts and concerns are not just being expressed by the so-called liberal media or partisan hacks. CRS, for example, says the revisions made by Executive Order 13422 "represent a clear expansion of presidential authority over rulemaking agencies."

CRS also notes that the Order "can be viewed as part of a broader statement of presidential authority presented throughout the Bush Administration – from declining to provide access to Executive branch documents and information to creating presidential signing statements indicating that certain statutory provisions will be interpreted consistent with the President's view of the 'unitary executive.'"

That's a rather serious observation coming from a preeminently nonpartisan source.

And the fact that subcommittees from both the Judiciary and Science Committees are looking into this issue I think underscores the serious concerns that the Order appears to present.

To help shed some light on these issues, we have with us today a truly notable witness panel. We are pleased to have a representative from the Administration as well as two former Administration officials. We also have the author of the CRS report that I mentioned earlier as well as one of the leading academics on Presidential review of rulemaking.

Accordingly, I very much look forward to hearing their testimony and appreciate their willingness to participate.