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**Testimony of Cass R. Sunstein  
Administrator, Office of Information and Regulatory Affairs  
before the  
Subcommittee on Courts, Commercial and Administrative Law  
Committee on the Judiciary  
United States House of Representatives  
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Mr. Chairman and Members of the Subcommittee:

I am grateful and honored to have the opportunity to appear before you today to discuss issues relating to regulation, with particular reference to Executive Order 13563, Improving Regulation and Regulatory Review, and the effort to minimize regulatory costs while maximizing net benefits.

Executive Order 13563 establishes our basic framework. It states that our regulatory system must. “Protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness and job creation.” It adds that we must use the best available science and allow for public participation. It emphasizes that we must promote predictability and reduce uncertainty, consider both benefits and costs, and use the least burdensome tools to achieve ends.

In the recent past, and in the implementation of that Executive Order, we have made a great deal of progress. In the future, we expect to be able to do even more. I will begin by focusing on retrospective review of existing rules, or less formally, the “regulatory lookback,” and then turn to our efforts to discipline the flow of new rules.

In section 6 of Executive Order 13563, the President ordered executive agencies to undertake an ambitious review of existing Federal regulations. Emphasizing that we must “measure, and seek to improve, the actual results of regulatory requirements,” the President directed executive agencies to produce, within 120 days, preliminary plans to review their existing significant regulations to determine whether any such regulations should be modified, expanded, or repealed. As many people emphasize, sometimes rules stay on the books even though they have outlived their usefulness. Sometimes rules are rendered obsolete by changed circumstances. Sometimes rules accumulate, and the cumulative burdens are excessive; efforts to streamline them and to remove redundancy can be highly beneficial.

Last May, agencies released over two dozen preliminary plans, identifying reforms that will save billions of dollars in the coming years. At the same time, agencies asked members of the public to evaluate their preliminary plans, to identify new reforms, and to participate in the creation of an improved regulatory system, reducing costs and promoting economic growth and job creation.

In August, twenty-six agencies released their final regulatory review plans. The plans span 805 pages. They include over 500 initiatives that will reduce costs, simplify the regulatory system, and eliminate redundancy and inconsistency. Many of those initiatives will help small business.

A great deal has already been achieved. Just a small fraction of the reform initiatives, already finalized or formally proposed to the public, are expected to save more than \$10 billion over the next five years. We expect that, ultimately, the savings from the numerous initiatives will greatly exceed that \$10 billion figure.

Consider a few examples:

- The Department of Health and Human Services will soon finalize two rules to remove unnecessary paperwork and regulatory requirements now imposed on hospitals and other healthcare providers, with anticipated five-year savings in excess of \$5 billion.
- The Environmental Protection Agency has proposed to allow states to eliminate redundant air pollution requirements for local gas stations because a large number of vehicles already have effective vapor control technologies. Over the next five years, the savings will exceed \$400 million.
- The Department of Agriculture has proposed a rule to streamline cumbersome, outdated poultry inspection requirements, allowing companies to choose a more flexible approach that will better protect food safety while producing five-year savings in excess of \$1 billion.
- The Department of Labor (DOL) Occupational Safety and Health Administration (OSHA) has finalized a rule eliminating 1.9 million hours in annual red tape formerly imposed on employers; OSHA is now working on a similar major initiative to reduce unnecessary burdens.
- In addition, OSHA has finalized a rule to simplify hazard warnings for workers, producing five-year benefits in excess of \$2.5 billion, mostly from reduced costs.

As these examples suggest, the relevant reforms span a wide range. A number of them involve reducing paperwork and reporting burdens, which members of the public, and small businesses in particular, have asked us to address.

A number of the new reforms focus specifically on small businesses. For example, the Department of Defense issued a new rule to accelerate payments on contracts to as many as 60,000 small businesses, thus improving their cash flow in an economically difficult time. To help small business borrowers, the Small Business Administration is adopting a single electronic application to reduce the paperwork burden now imposed on certain lenders, which will in turn benefit borrowers who seek relatively small amounts of capital to grow and succeed. Over two dozen reforms from the Department of Transportation involve small businesses in particular.

Consistent with Executive Order 13563, all of the plans explicitly recognize that the regulatory lookback is not a one-time endeavor. Agencies will continue to revisit existing rules, asking whether they should be updated, streamlined, or repealed. And they will do so in close consultation with the public in general and with small business in particular. Ideas are welcome at any time. The Office of Information and Regulatory Affairs (OIRA) has issued guidance requiring agencies to provide regular updates to the public, with timelines on reforms, and to give priority to reforms that promise significant, quantifiable reductions in costs and in paperwork and reporting burdens.

We are aware that many people have suggested that independent regulatory agencies should participate in the lookback process. In Executive Order 13579, “Regulation and Independent Regulatory Agencies,” the President said that they should do exactly that, and asked them to produce their own plans within 120 days. Sixteen independent agencies responded to his request. The Federal Communications Commission provided an especially impressive plan and has announced the repeal of 190 regulations (including the long-discussed fairness doctrine). We are hopeful that significant savings will result from these efforts as well. We are also hopeful that reform initiatives from independent agencies will reduce burdens on small businesses.

Many people have expressed concern with the “flow” of new rules, not merely with the “stock” of existing rules. With respect to new rules, Executive Order 13563 provides a series of important directives and requirements. As noted, the Executive Order makes explicit reference to “economic growth, innovation, competitiveness, and job creation,” and it states that our regulatory system “must promote predictability and reduce uncertainty.” Among other things, and to the extent permitted by law, the Executive Order:

- Requires agencies to consider costs and benefits, to ensure that the benefits justify the costs, and to select the least burdensome alternatives.
- Requires on agencies to encourage public participation in rulemaking. The order directs agencies to promote an open exchange with State, local, and tribal officials; experts in relevant disciplines; affected stakeholders; and the public in general. It also directs agencies to act, even in advance of rulemaking, to seek the views of those, including small businesses, who are likely to be affected.
- Directs agencies to take steps to harmonize, simplify, and coordinate rules. In order to reduce costs and to promote simplicity, it calls for greater coordination within and across agencies.
- Directs agencies to consider flexible approaches that reduce burdens and maintain freedom of choice for the public.

In response to Executive Order 13563, we have taken a number of steps to increase transparency, simplify rules, promote predictability, and discipline costs. Agencies have also withdrawn or are reconsidering a number of rules in order to address substantive concerns raised by the public. In this process of reconsideration, agencies are giving new attention to public concerns, especially those involving costs.

Ever since the Reagan Administration, the central focus has been placed on “maximizing net benefits” – on ensuring that for every rule, agencies select the approach that meets the statutory requirements and has the highest net benefits (meaning benefits minus costs). Through the third fiscal year of the Obama administration, the net benefits of regulations reviewed by OIRA and issued by executive agencies exceeded \$91 billion – over twenty-five times the corresponding number in the George W. Bush Administration, and over six times the corresponding number in the Clinton Administration.

The benefits of recent and forthcoming rules are no mere abstractions. They are helping American families every day. The benefits include billions of dollars in savings for consumers, achieved through historic rules increasing the fuel economy of both cars and trucks. They include thousands of lives saved and tens of thousands of illnesses and accidents prevented, achieved through rules reducing the risk of salmonella, increasing safety on the highways, and making the air safer to breathe. They include billions of dollars in economic savings for businesses, achieved through regulatory reform.

I would add that with respect to rules reviewed by OIRA and issued by Federal agencies, the last three years of the George W. Bush Administration saw higher regulatory costs than the first three years of the Obama Administration. In the last ten fiscal years, the highest costs were imposed in 2007.

Responding to the President's emphasis on public participation in the rulemaking process, we have also made fundamental revisions in the two central websites through which members of the public interact with regulatory agencies, [reginfo.gov](http://reginfo.gov) and [regulations.gov](http://regulations.gov). On [reginfo.gov](http://reginfo.gov), it is now possible to see, at a glance, the full set of rules under review at OIRA, including descriptions of relevant information, such as whether they are economically significant. The same website offers similar transparency for information collection requests.

[Regulations.gov](http://Regulations.gov) has recently seen numerous improvements designed to enable the American public to see and to comment on regulations. Time and again, proposed rules have been improved, rethought, repropose, or even withdrawn in response to the comments that agencies have received. However well-motivated and expert, agencies may lack important information about the actual effects of rules. The process of public comment is an indispensable means of providing that information in advance. And the regulatory lookback is an effort to ensure that if errors are made, they are corrected.

A common concern is that regulations are too long and complex. In response, we have recently required all lengthy or complex rules to be accompanied by a clear, straightforward executive summary, separately listing every provision and also describing both costs and benefits.

As President Obama has said, "We can make our economy stronger and more competitive, while meeting our fundamental responsibilities to one another." There is a great deal more to be done. We will continue to eliminate unjustified regulatory costs, and thus strengthen our economy while protecting the health and safety of the American people in an economically challenging time.