

TESTIMONY OF
NOAH M. SACHS

PROFESSOR
UNIVERSITY OF RICHMOND SCHOOL OF LAW

MEMBER SCHOLAR
CENTER FOR PROGRESSIVE REFORM

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OFFICE OF INFORMATION AND REGULATORY AFFAIRS

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Chairman Marino and Members of the Committee, thank you for inviting me here today to testify about the Office of Information and Regulatory Affairs (OIRA), federal regulations, and regulatory reform. These are exceedingly important issues that deserve high-level attention.

I am a Professor at the University of Richmond School of Law and a Member Scholar of the Center for Progressive Reform (<http://www.progressivereform.org/>). Founded in 2002, the Center for Progressive Reform is a 501(c)(3) nonprofit research and educational organization comprising a network of 60 scholars across the nation dedicated to protecting health, safety, and the environment through analysis and commentary.

My work on regulation and administrative law includes multiple articles in leading law reviews, book chapters, and a law textbook on hazardous substances regulation. At the University of Richmond School of Law, I teach courses in environmental law and international environmental law, and I direct the Robert R. Merhige Center for Environmental Studies. Prior to teaching at the University of Richmond, I was a lecturer at Harvard Law School and practiced regulatory and administrative law for five years at major law firms in New York and Boston.

I welcome this opportunity to share my views about the importance of effective regulation and about oversight of the Office of Information and Regulatory Affairs (OIRA).

INTRODUCTION

Our regulatory system was intended to ensure that the will of Congress is carried out by administrative agencies, with accountability, public input, and transparency. The long history of effective regulation—airbags, removing lead from gasoline, cleaning air and water, mandating disclosure of the true interest rates charged by banks, and more— demonstrates that when agencies fulfill their legislative mandates, they save lives, prevent serious injuries, and protect the economic livelihood of millions of Americans. By comparison, there are many areas where under-regulation has led to loss of life, jobs, and property. Consider the Upper Big Branch Mine disaster and the frequent outbreaks of serious food poisoning that have killed many and injured thousands more.

My testimony today makes three points:

- Regulations have benefited our country greatly, with benefits that far exceed costs.
- Many agencies are not carrying out their statutory missions in a timely and effective manner, which should be of great concern to Congress. Extraordinary delays continue to hamper rulemaking.
- OIRA has amassed too much power over the regulatory process and contributes to the delays in needed and effective regulation.

I. The Benefits of Regulations

Study after study has concluded that the benefits of federal regulations far exceed the costs and that the costs of regulations are consistently overestimated at the time that regulations are being drafted. Federal regulations are not a significant contributor to job loss. Consider the following:

- OMB's 2014 Report to Congress on the Benefits and Costs of Federal Regulations showed that federal regulations enacted between 2003 and 2013 yielded annual benefits between \$217 billion and \$863 billion, while imposing annual costs of \$57 billion to \$84 billion.¹ In other words, the benefits exceeded costs by three to fifteen times.
- In a 2011, the Economic Policy Institute (EPI) found that the major EPA rules issued during the first two years of the Obama Administration produced total annualized benefits of between \$44 billion and \$148 billion, as compared to total annualized costs of between \$6.7 billion and \$12.5 billion. The EPI report also found that four of EPA's proposed major rules generated total annual benefits of between \$173 billion and \$457 billion, as compared to total annual costs of between \$14 billion and \$15 billion.²
- A comprehensive book-length study by scholars at the University of Pennsylvania concluded: "to date the empirical work suggests that regulation plays relatively little role in affecting the aggregate number of jobs in the United States." The authors explained that "the empirical evidence actually provides little reason to expect that U.S. economic woes can be solved by reforming the regulatory process."³
- NYU's Institute for Policy Integrity made the same point: "The current debate on jobs and environmental regulation too often relies on thinly-supported forecasts about jobs 'killed' or 'created' by public protections."⁴
- Regulatory opponents frequently cite the statistic that federal regulations impose \$1.8 trillion in annual costs on the economy. This figure is *twenty to thirty times* the cost estimates provided by OMB itself. The \$1.8 trillion figure comes from a report from the Competitive Enterprise Institute, the "Ten Thousand Commandments," which has been thoroughly debunked. The Washington Post found that the report has "serious methodological problems" and does not compute the benefits of the regulations.⁵ The claim of \$1.8

¹ OMB, 2014 Report to Congress on the Benefits and Costs of Federal Regulations, *available at*

² Isaac Shapiro, *Tallying Up the Impact of New EPA Rules: Combined Costs of Obama EPA Rules Represent a Sliver of the Economy and are Far Outweighed by Cumulative Benefits* (Econ. Pol'y Inst., Briefing Paper No. 311, 2011), *available at* <http://w3.epi-data.org/temp2011/BriefingPaper311.pdf>.

³ CARY COGLIANESE, ADAM M. FINKEL & CHRISTOPHER CARRIGAN, DOES REGULATION KILL JOBS? Chapter 1 (2013).

⁴ NYU Institute for Policy Integrity, *Regulatory Red Herring: The Role of Job Impact Analyses in Environmental Policy Debates*, *available at* <http://policyintegrity.org/publications/detail/regulatory-red-herring>

⁵ *Fact Checker: The Claim that American Households Have a \$15,000 Regulatory Burden*, WASHINGTON POST, January 14, 2015.

trillion in annual regulatory costs deserved “two pinocchios,” the Post said, given that the report’s authors themselves admitted that the report is “not scientific” and “back of the envelope.”⁶ The author of the report acknowledged that “a wave of assumptions and guesses without scholarly pretensions underly this tally” of \$1.8 trillion.⁷

- Department of Labor statistics on the reasons for mass layoff events in the United States in the fourth quarter of 2012, one of the most recent periods available, indicate that only 0.2% of the layoffs were due to “government regulation/intervention.” This compares with 3.2% for “changes in business ownership/restructuring,” and 23.5% due to “contract completion.”⁸

Raw numbers on costs and benefits do not fully portray the critical role that regulations play in our lives every day. Over the last century, regulations have made our food supply safer, vastly improved air quality, saved consumers billions by ensuring fair competition, made nursing homes safer, empowered disabled persons, saved the lives of thousands of workers, and saved the lives of thousands of motorists through car safety standards.

In looking at studies of the costs and benefits of regulation, we should keep in mind that estimates of the cost of regulations are usually supplied by industry itself. Agencies rely primarily on surveys of the companies that are subject to the regulation. Because companies know the purpose of these surveys, they have every incentive to overstate their costs, thereby skewing the final cost-benefit analysis toward weaker regulatory standards.⁹

Moreover, industry cost estimates do not account for technological innovations that reduce the cost of compliance over time. When companies are asked to predict their compliance costs for a new regulation, they often will point to the most expensive existing “off-the-shelf” compliance technology available. Once the regulation actually goes into effect, however, companies have a strong incentive to find less costly technologies. As a result, overall compliance costs tend to be less than the predicted costs. Moreover, the technological innovations can produce co-benefits unrelated to the regulation—such as increased productivity and efficiency.¹⁰

As the following chart indicates, several retrospective studies of regulatory costs have found that the initial cost estimates were too high.

⁶ *Id.*

⁷ Clyde Wayne Crews, Jr. *Tip of the Cost-Curve 10* (2015 edition), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2502883.

⁸ Department of Labor, Economic News Release, Reason for Layoffs: Extended Mass Layoff Events, <http://www.bls.gov/news.release/mslo.t02.htm>.

⁹ Thomas O. McGarity & Ruth Ruttenberg, *Counting the Cost of Health, Safety, and Environmental Regulation*, 80 TEX. L. REV. 1997, 2011, 2044-45 (2002).

¹⁰ *Id.* at 2049-50.

Retrospective Studies of Regulatory Costs

Study	Subject	Results
PHB, 1980 ¹¹	Sector level capital expenditure for pollution controls	EPA overestimated capital costs more than it underestimated them, with forecasts ranging 26 to 126% above reported expenditures
OTA, 1995 ¹²	Total, annual, or capital expenditures for occupational safety & health regulations	OSHA overestimated costs for 4 out of 5 health regulations, with forecasts ranging from \$5.4 million to \$722 million above reported expenditures
Goodstein & Hedges, 1997 ¹³	Various measures of cost for pollution prevention	Agency and industry overestimated costs for 24 of 24 OSHA & EPA regulations, by at least 30% and generally by more than 100%
Resources for the Future, 1999 ¹⁴	Various measures of cost for environmental regulations	Agency overestimated costs for 12 of 25 rules, and underestimated costs for 2 rules

We should keep in mind as well that while some businesses pay the cost of regulation, other businesses are among the primary beneficiaries of regulations. When catastrophe results from a failure to regulate adequately, the attendant costs can be devastating for businesses. Think of all the restaurants and businesses in Charleston, West Virginia, that had to close their doors for more than a week following the 2014 spill of MCHM into the Elk River. Or consider all the hotels, fishermen, and restaurants that were devastated by the 2010 Gulf Oil spill. Stronger regulations can deliver benefits to many businesses that might otherwise be caught in harm's way.

This leads to a larger point, which is that regulations typically do not impose *new* costs on society. Rather, they re-allocate who pays the costs. Regulations reflect Congress's judgment, in enacting a statute, that a particular harm is occurring and that the cost of preventing that harm should be shifted onto the party that is responsible. So when a regulation is killed, overturned, or repealed, the costs to industry of that regulation do not vanish. Instead, those costs continue to be borne by the general public, in terms of lives lost, preventable cancers, and lost work-days. For example, a study of environmental and public health externalities found that coal-fired power plants create air pollution damages that are much larger than the value that the plants provide to society.¹⁵ By definition, the general public bears the costs of this air pollution,

¹¹ Winston Harrington, Richard D. Morgenstern, & Peter Nelson, *On the Accuracy of Regulatory Cost Estimates* 6 (Resources for the Future, Discussion Paper 99-18, 1999).

¹² OFFICE OF TECHNOLOGY ASSESSMENT, GAUGING CONTROL TECHNOLOGY AND REGULATORY IMPACTS IN OCCUPATIONAL SAFETY AND HEALTH: AN APPRAISAL OF OSHA'S ANALYTICAL APPROACH 58 (1995).

¹³ Eban Goodstein & Hart Hodges, *Polluted Data: Overestimating Environmental Costs*, 8 AM. PROSPECT 64 (Nov./Dec. 1997).

¹⁴ Harrington, Morgenstern, & Nelson (1999).

¹⁵ Nicholas Z. Muller, Robert Mendelsohn & William Nordhaus, *Environmental Accounting for Pollution in the United States Economy*, 101 AM. ECON. REV. 1649 (2011), available at <http://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.101.5.1649>.

and improved regulation of coal-fired power plants would, properly, shift some or all of these costs to the power plant owners.

II. Extraordinary Delays Continue to Hamper Rulemaking

Despite an overall record of regulatory success, agencies are often being prevented from carrying out their missions effectively by the destructive convergence of funding shortfalls and excessive procedural hurdles.

Significant rulemakings in the United States routinely take three to seven years from policy formulation to the end of judicial review. This means that when Congress identifies a compelling national problem and passes a statute to address it, it can take a decade before agencies promulgate all the relevant implementing regulations and court challenges are resolved. As Professor Richard Pierce has observed, “[I]t is almost unheard of for a major rulemaking to be completed in the same presidential administration in which it began. A major rulemaking typically is completed one, two, or even three administrations later.”¹⁶

A typical time schedule for significant rules would look like the following:

- 12-36 months to develop a proposed rule
- 3 months for OIRA review of the draft proposal
- 3 months for public comment
- 12 months to review comments and write final justification
- 3 months (or more) for OIRA review of the final rulemaking
- 2 months delay under the Congressional Review Act
- 12-36 months for judicial review (assuming a court stays the rule)

TOTAL: 47-95 months (3.9-7.9 years)

This is an extraordinarily lengthy process for developing rules that Congress itself has authorized or mandated. With the Administrative Procedure Act (APA), public comment processes, judicial review, and a host of statutory requirements passed in the last two decades, there are sufficient procedures to ensure accountability and fairness. In fact, the system is already laden with too much procedure. Since the 1990s, statutes and executive orders have added multiple layers of new rulemaking procedures and analytical requirements on top of the APA’s procedures. As a result, the rulemaking process has become inordinately complex, time-consuming, and resource-intensive.

¹⁶ Richard J. Pierce, Jr., *Waiting for Vermont Yankee III, IV and V? A Response to Beermann and Lawson*, 75 GEO WASH. L. REV. 902, 912 (2007).

Keeping in mind that the agency rulemaking process is meant to **carry out** congressional will, these delays frustrate what Congress intended when it passed the legislation. In fact, regulatory delay often violates the law. A 2012 report by Public Citizen examined 159 regulations that Congress had authorized agencies to promulgate by specific deadlines.¹⁷ Agencies missed the deadline for 78 percent of the regulations. A recent Government Accountability Office (GAO) report found a similar pattern of repeated delays in rulemaking. The report includes an extraordinary chart tracking the time elapsed between when EPA was obligated by law to issue a regulation and when it actually issued the regulation. For one Clean Air Act rule, the elapsed time was 26 years after the Congressional deadline, and for another it was 19 years.¹⁸

Regulatory delay can kill. When regulations governing food safety, occupational hazards, mine safety, nursing home safety, or transportation safety face such extraordinary delay, the public suffers in the meantime.

Consider the Occupational Safety and Health Administration's (OSHA) long-delayed safety improvement regulations for construction cranes. In the late 1990s, construction accidents involving cranes were killing 80 to 100 workers annually. OSHA's then-governing safety standards for cranes dated to 1971, so in 1998, OSHA initiated a rulemaking to update the standards. A decade in the regulatory maze followed for OSHA officials, including frequent stakeholder consultation, federal register notices, preparation of a Regulatory Impact Analysis, OIRA review, review of the impact on small business, and endless reporting and fact-finding, before OSHA could finalize the regulation in 2010. OSHA estimated that 220 lives would have been saved if the crane rule had been completed in 2000 instead of 2010.¹⁹

Delay is a fact of our regulatory system. The system is slow and cumbersome, and delay has real impacts in terms of lives lost and injuries that could have been avoided. In this testimony, I do not intend to comment on all the pending regulatory reform legislation in the House. But this Committee should be quite concerned about the delays that I have outlined here, and it should be wary of adding even more procedural requirements to the rulemaking process.

III. OIRA Has Too Much Power Over the Regulatory Process and Contributes to the Delay of Needed and Effective Regulations

OIRA now serves as the primary choke point for new regulations as they undergo review pursuant to Executive Orders 12866 and 13563. OIRA reviews both proposed regulations and draft final regulations, and it has gradually extended its reviews to a host of non-significant rules and guidance documents. Not only does OIRA review extend the length of time for rulemaking, but it also provides numerous opportunities for political interference with the content of the rule. During OIRA review of agency regulations, industry lawyers and lobbyists use OIRA as a court

¹⁷ Public Citizen, *Public Safeguards Past Due: Missed Deadlines Leave Public Unprotected* (June 2012), available at <https://www.citizen.org/documents/public-safeguards-past-due-report.pdf>.

¹⁸ GOV'T ACCOUNTABILITY OFFICE, GAO-15-34, ENVIRONMENTAL LITIGATION: IMPACT OF DEADLINE SUITS ON EPA'S RULEMAKING IS LIMITED (DEC. 2014), available at <http://www.gao.gov/assets/670/667533.pdf>.

¹⁹ For an overview of this regulatory saga, see Public Citizen, *Cranes & Derricks: The Prolonged Creation of a Key Public Safety Rule* (2011), available at <https://www.citizen.org/documents/CranesAndDerricks.pdf>.

of last resort to weaken or block pending regulations that have been vetted within the agency that promulgated them.

An agency may not publish a proposed or final rule that is undergoing review until it has received OIRA's blessing, which sometimes means agreeing to drastic changes to the rule's substance. OIRA does not merely serve an advisory role in the regulatory process. Instead, although it has limited staff and subject-matter expertise, OIRA has become a kind of super-regulator for every major federal agency, determining which regulations can and cannot go forward. It has effective veto power. As Georgetown Law Professor Lisa Heinzerling concluded, "the head of OIRA is effectively the head of the EPA" in the rulemaking domain.²⁰

Political interference in agency rules through OIRA review has been well-documented. A 2011 study by the Center for Progressive Reform examined ten years of data on OIRA reviews and found that when industry lobbied OIRA, the review was more likely to be delayed, going beyond the 120-day limit permitted by Executive Order 12866. The white paper also found that rules were more likely to be changed during those OIRA reviews where industry lobbied heavily.²¹ The study found that 65 percent of all participants in OIRA meetings represented corporate interests, compared to just 12 percent who represented public interest groups.²²

Through the years, OIRA has expanded its influence over the regulatory system by asserting review authority over a wide universe of agency actions. Executive Order 12866 directs OIRA to focus its reviews, with rare exceptions, on only the biggest agency regulations, those with an annual economic impact of \$100 million or more. Yet OIRA has broadly interpreted Executive Order 12866 to include almost any agency rule, no matter how minor. OIRA has also asserted review authority over various non-regulatory actions, including guidance documents and purely scientific determinations and assessments.

Increasingly, OIRA's workload is becoming oriented toward these minor rules and non-regulatory actions. According to OIRA's Regulatory Dashboard, of 32 federal rules that have been pending at OIRA for more than 90 days, only 3 of them are major, economically significant rules.²³ Former OIRA Administrator Cass Sunstein has reported that over 80% of OIRA-reviewed rules are reviewed for reasons other than economic significance.²⁴

At the same time that OIRA's influence over agency priorities and decisions has increased, transparency within OIRA remains abysmal. OIRA does not make public the minutes of its meetings or other communications with lobbyists. OIRA also does not consistently disclose its internal deliberations or its communications with the affected agency. Indeed, OIRA

²⁰ Lisa Heinzerling, Sunstein's Simpler Government is Legally Suspect, Overly Secretive, and Politically Unaccountable, Thinkprogress, Apr 4, 2013.

²¹ Rena Steinzor et al., *Behind Closed Doors at the White House: How Politics Trumps Protection of Public Health, Worker Safety and the Environment* (Ctr. for Progressive Reform, White Paper 1111, 2011), available at http://www.progressivereform.org/articles/OIRA_Meetings_1111.pdf.

²² Id.

²³ OIRA Regulatory Dashboard, <http://www.reginfo.gov/public/>.

²⁴ Cass R. Sunstein, *The Office of Information and Regulatory Affairs: Myths and Realities*, 126 HARV. L. REV. 1838, 1868 (2013).

typically does not even explain in writing to the agency itself why it is insisting on changes to regulations or is refusing to act on regulations.

OIRA review has served to delay critical rulemakings by months or even years: OSHA's draft proposed rule to protect workers against harmful exposure to silica dust languished at OIRA for over two-and-a-half years before the review was finally completed in August 2013.²⁵ The Food and Drug Administration's rulemaking on preventing pathogen contamination of fruits and vegetables—which Congress directed the agency to issue to implement the Food Safety Modernization Act of 2010 (FSMA)—was stuck at OIRA for nearly 13 months before OIRA completed its review in January 2013.²⁶ Remarkably, this delay took place even though Congress itself had clearly stipulated in the FSMA that the proposal should be issued no later than January 2012.

To avoid criticism of delay, OIRA has resorted to discouraging agencies from sending it draft rules, even when these drafts are ready for review.²⁷ By taking this unusual step, OIRA can delay a rule without having to officially start the clock on the review period, which Executive Order 12866 caps at 90 days with a possible one-time extension of 30 days. The formal procedures of Executive Order 12866 put OIRA in the position of *reviewing* agency decisions, yet by using off-the-record phone calls and oral communications, OIRA has pressured agencies from the beginning to shape rules to OIRA's liking.²⁸

Given how OIRA has expanded its reach over agency rulemaking, providing an ideal window for industry lobbyists to have a second crack at undermining health and safety regulations, this is not the time to extend OIRA's authority to independent agencies, as some members of Congress have proposed. Congress purposely established these agencies, such as the FCC, the NLRB, the NRC, and the SEC, as independent from White House control. Usually headed by multi-member commissions whose members have staggered terms, these agencies are designed to be insulated from the political control of the President. This insulation has the virtue of ensuring continuity and uniformity of policy over time, without abrupt reversals when a new President takes office. To make independent agencies subject to OIRA review under Executive Order 12866 would undercut the ultimate goal of shielding them from politics and will cut into

²⁵ Off. Info. & Reg. Affairs, White House Off. Mgmt & Budget, OIRA Conclusion of EO 12866 Regulatory Review: Occupational Exposure to Crystalline Silica, <http://www.reginfo.gov/public/do/eoDetails?rrid=119957> (last visited July 13, 2015).

²⁶ Off. Info. & Reg. Affairs, White House Off. Mgmt & Budget, OIRA Conclusion of EO 12866 Regulatory Review: Produce Safety Regulation, <http://www.reginfo.gov/public/do/eoDetails?rrid=121344> (last visited July 13, 2015).

²⁷ CURTIS W. COPELAND, LENGTH OF RULE REVIEWS BY THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS 38 (Revised Draft, Nov. 1, 2013, prepared for the Administrative Conference of the United States), *available at* <https://www.acus.gov/sites/default/files/documents/Revised%20Draft%20OIRA%20Report%20110113%20CIRCULATED.pdf> (“Starting in 2012, however, these employees said they have had to meet with and/or brief the OIRA desk officer before submitting each significant rule for formal review (which were sometimes referred to by the agency employees interviewed for this report as ‘Mother-may-I’ meetings), and have had to obtain OIRA’s approval before submitting each rule.”).

²⁸ SELECT COMMITTEE ON ENERGY INDEP. & GLOBAL WARMING, MAJORITY STAFF, 110TH CONG, INVESTIGATION OF THE BUSH ADMINISTRATION’S RESPONSE TO MASSACHUSETTS V. EPA 2 (2008) (noting pressure from the Bush Administration’s OIRA to the EPA not to send greenhouse gas regulations for OIRA review in the wake of *Massachusetts v. EPA*).

their ability to issue mission-critical rules. A President could easily block regulations from independent agencies that he or she opposes.

Although these independent agencies are currently outside of OIRA review, they still have numerous checks on their discretion and their rule-making authority. All of these agencies are still subject to the APA (and/or their respective authorizing statutes) when they promulgate regulations, their rules undergo public comment, they are subject to Congressional oversight, and their rules are subject to judicial review. No one disputes that independent agencies, like other agencies, should make reasoned decisions and assess the consequences of their regulatory activity, but subjecting them to OIRA review is not warranted.

If Congress is concerned that independent agencies are issuing regulations with costs that far exceed benefits, it could take sensible steps that do not put the agencies under the thumb of OIRA or the White House. It could, for example, require the agencies to prepare regulatory impact statements for their major regulations and make them public. Congress could also have these regulatory impact statements periodically reviewed for accuracy by the Congressional Budget Office or Government Accountability Office.

IV. The Path Forward

In overseeing the regulatory process, Congress should ensure that agencies have the resources and personnel to carry out directives from Congress and that they can undertake their work without unnecessary delay. OIRA needs to reorient its role in the regulatory system so that it works with agencies to help them achieve their statutory missions of protecting public health, safety, and the environment. It should be a watchdog for the public interest.

A task that OIRA could usefully perform would be to evaluate, on an *ex post* basis, the accuracy of agency's *ex ante* estimates of costs and benefits of federal rules. This evaluation should use current data not available at the time of the original analyses in order to check the accuracy of the original projections. Such an analysis would provide a wealth of useful information and would send a strong signal about how much we should rely on *ex ante* estimates of regulatory costs and benefits in regulatory impact analyses.

Going forward, OIRA should also limit its review to economically significant rules and should not review non-regulatory actions, including guidance documents and purely scientific determinations and assessments. Executive Order 12866 should be amended to require increased transparency at OIRA. OIRA should disclose all of its communications with agencies, the reasons for changes in the content of regulations that it is suggesting, and the substantive changes to regulations that are being made at OIRA's behest. Given the power this small office exerts over American life, the public deserves this transparency from OIRA.

As a regulatory clearing-house, OIRA is well-positioned to tackle the problem of regulatory delay outlined above. OIRA should submit an annual report to Congress and the President that: (1) describes the activities that it has undertaken to expedite rulemakings, (2) identifies common sources of undue regulatory delay, including unnecessary and duplicative analytic and procedural obstacles in the rulemaking process, and (3) proposes any needed legislative or administrative reforms for eliminating these sources of undue regulatory delay.

Promoting effective and protective regulation also requires assistance to federal agencies themselves. Needed reforms should include:

Providing agencies with the resources they need. One of the reasons that regulatory agencies cannot adequately fulfill their statutory missions is that financial resources and personnel have been reduced or maintained at constant levels in recent years. This has been occurring as the agencies' missions have become more complex, forcing these agencies to effectively do more with less.

Providing agencies with enhanced legal authority. For many regulatory agencies, the statutes under which they operate have not been reviewed or refreshed in decades. The intervening years have revealed shortcomings in those statutes while new public health, safety, and environmental issues that were not initially addressed by the original statutes have emerged. In some cases, agencies lack the enforcement and rulemaking authority they need to tackle these issues.

Avoiding unnecessary analytical requirements. Over the past few decades, the rulemaking process has become encumbered by a growing number of analytical requirements. These analytical obstacles draw upon agencies' already stretched resources and distract them from focusing on their regulatory missions without meaningfully improving the quality of agency decision-making. Regulatory reform legislation of the kind introduced in Congress during the last few years would exacerbate these existing problems, creating a rulemaking process so laden with procedural and analytical requirements that the process would become completely dysfunctional.

Thank you for this opportunity to testify at this hearing this afternoon.