

TESTIMONY OF CASS R. SUNSTEIN
ADMINISTRATOR,
OFFICE OF INFORMATION AND REGULATORY AFFAIRS
September 14, 2011
House Oversight and Government Reform Committee

Mr. Chairman and Members of the Committee:

I am grateful and honored to have the opportunity to appear before you today to discuss issues relating to regulation and Executive Order 13563, Improving Regulation and Regulatory Review. In the recent past, and in the implementation of that Executive Order, we have made significant progress in eliminating unjustified regulatory costs. I will begin by focusing in particular on retrospective review of existing rules, or less formally, the “regulatory lookback.”

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,” he directed such agencies to produce, within 120 days, preliminary plans to reassess those requirements and to improve, streamline, or eliminate them where appropriate.

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.

Last month, 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.

As the plans demonstrate, a great deal has already been achieved. Significant burden-reducing initiatives have been finalized or publicly proposed from the Department of Labor, the Environmental Protection Agency, the Department of Transportation, and the Department of Health and Human Services. These initiatives are expected to save more than \$6 billion over the next five years.

Consider just three examples of already-completed reforms:

- A final rule of the Department of Health and Human Services reduces costs and improves access to care in rural areas by permitting hospitals to use telemedicine to obtain services from a practitioner credentialed at a distant hospital (so long as that hospital is also a Medicare-participating entity and there is a written telemedicine agreement in place between the hospitals). This rule is estimated to save approximately \$65 million over the next five years; it will also facilitate access to a broader range of care and services for patients.

- The Department of Labor has finalized a rule eliminating 1.9 million burden hours formerly imposed on employers; in monetary terms, that rule is expected to save over \$200 million in the next five years.
- The Environmental Protection Agency finalized a rule excluding all milk and milk product containers from its oil spill regulations. EPA estimates that the savings will be more than \$700 million over the next five years.

Estimates of the monetized five-year savings from just a small fraction of the plans' initiatives range up to \$10 billion or more. This figure includes initiatives that are completed, formally proposed to the public, or well beyond the planning stages. We hope and expect that ultimately, the savings from the numerous initiatives will greatly exceed that \$10 billion figure.

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. Many others involve eliminating redundant or excess regulatory requirements. Consider just a few examples:

- The Department of Health and Human Services will soon propose to remove unnecessary regulatory and reporting requirements now imposed on hospitals and other healthcare providers, potentially saving an anticipated \$4 billion over the next five years.
- The Department of Labor is finalizing a rule to simplify and to improve hazard warnings for workers, likely saving employers over \$2.5 billion over the next five years while, at the same time, improving worker safety.
- The Department of Transportation is proposing a rule, announced last month, that will eliminate unnecessary regulation of the railroad industry, saving up to \$340 million in the near future, and avoiding the risk that regulatory costs will be passed onto consumers.

Many of the new reforms focus specifically on small business. For example, the Department of Defense recently 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.

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. Ideas are welcome at any time.

Let me conclude with two additional points. Many people have suggested that independent regulatory agencies should participate in the lookback process. In Executive Order 13579, the

President said that they should do exactly that, and asked them to produce their own plans within 120 days. We are hopeful that significant savings will result from these efforts as well.

Many people have also 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 directives and requirements. 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 increased public participation. 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. Attempting to bring rulemaking into the twenty-first century, the order requires use of the Internet to promote such an exchange. It also directs agencies to act, even in advance of rulemaking, to seek the views of those who are likely to be affected.
- Directs agencies to take steps to harmonize, simplify, and coordinate rules. The order emphasizes that some sectors and industries face redundant, inconsistent, or overlapping requirements. 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.

As President Obama has said, “We can make our economy stronger and more competitive, while meeting our fundamental responsibilities to one another.” We will continue to eliminate unjustified regulatory costs, and thus strengthen our economy, while taking sensible, cost-effective, evidence-based steps to protect public health and welfare.

Cass R. Sunstein



Before becoming Administrator, Cass R. Sunstein was the Felix Frankfurter Professor of Law at Harvard Law School. Mr. Sunstein graduated in 1975 from Harvard College and in 1978 from Harvard Law School magna cum laude. After graduation, he clerked for Justice Benjamin Kaplan of the Massachusetts Supreme Judicial Court and Justice Thurgood Marshall of the U.S. Supreme Court, and then he worked as an attorney-advisor in the Office of the Legal Counsel of the U.S. Department of Justice. He was a faculty member at the University of Chicago Law School from 1981 to 2008.

Mr. Sunstein has testified before congressional committees on many subjects, and he has been involved as an advisor in constitution-making and law reform activities in a number of nations. A specialist in administrative law, regulatory policy, and behavioral economics, Mr. Sunstein is author of many articles and a number of books, including *After the Rights Revolution* (1990), *Risk and Reason* (2002), *Laws of Fear: Beyond the Precautionary Principle* (2005), *Worst-Case Scenarios* (2007), and *Nudge: Improving Decisions about Health, Wealth, and Happiness* (with Richard H. Thaler, 2008).