Sen. Portman

I strongly support the Administration's emphasis on asking federal agencies to "look back" and eliminate inefficient old rules. Such regulatory housecleaning, which has actually been required by law since 1981, is essential to smarter regulation and reducing overall burdens. I understand that agencies have just yesterday posted their most recent retrospective review updates. It will take some time to digest all that information. But I worry that the early results aren't promising.

Just looking at the first 90 regulations examined under the regulatory look-back, the estimated compliance cost savings is <u>$3.3 billion</u>, according to an analysis by the American Action Forum of agency data published in the Federal Register.[1] Your testimony today suggests that more recent efforts may have boosted look-back cost savings to around <u>$10 billion</u>.

When you put that figure in context, the picture becomes less encouraging. According to data reported by the agencies themselves, in 2012 alone the Administration's new regulations imposed <u>$236 billion</u> in new burdens. In fact, according to the same American Action Forum report, looking at data from the first 90 regulations reviewed, <u>new costs</u> attributable to the regulatory look-back totaled <u>$11 billion</u>. In other words, the <u>costs</u> of regulations attributed to the early look-back rules actually <u>exceeded the cost savings</u>.

The most recent analysis I've seen examining quantified rulemaking in the retrospective reports found that <u>rules increasing costs outnumber rules implementing cost-saving measures by a ratio of 3.7 to 1</u>.[2]

- **Are the findings by the American Action Forum consistent with any review of the effectiveness of regulatory look-back conducted by OIRA? What can be done to improve the regulatory look-back process and to ensure that it does not generate more costs than benefits?**

- **Do you see merit in retrospective review provisions that would allow members of the public to petition for specific retrospective reviews, helping identify the most troublesome rules?**

- **Your written testimony noted that the net benefits (benefits minus costs) of federal regulations reviewed by OIRA in the first four years of the current administration totaled $159 billion, with another $25 billion promised for the fifth year. Am I correct that these figures are based on agency predictions of the benefits and costs of their regulations before they are implemented, rather than actual results? Will the**

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[1] Sam Batkins and Ike Brannon, *The Need For Retrospective Review Of Regulations*, Regulation, at 3-4 (Summary 2013), *available at* http://www.cato.org/sites/cato.org/files/serials/files/regulation/2013/6/regulation-v36n2-6_0.pdf#page=2.

[2] Sam Batkins, Testimony Before the House Subcommittee on Regulatory Reform (Feb 11, 2014).

administration's retrospective review initiative produce quantitative evidence on the actual benefits and costs of regulations after they were implemented?

To ensure that regulations on the books are as effective, streamlined, and cost-justified as possible, the Administration is committed to retrospective review of regulations. In addition to the $10 billion that will be saved in the near term from regulations that have already been finalized, agencies are working on a number of other important look-back rules. For example, the Department of Transportation recently proposed to rescind the requirement that truck drivers submit and retain driver-vehicle inspection reports when the driver has neither found nor been made aware of any vehicle defects or deficiencies. When finalized, this change could save tens of millions of hours in paperwork burden per year, for approximately $1.5 billion in annual paperwork time savings, or an additional $7.5 billion in savings over 5 years. Public participation has been an important component of our regulatory look-back efforts to date, and will continue to be important in the future.

I have not reviewed the American Action Forum reports in any detail, but a cursory read suggests that the report has a number of inaccuracies. For example, our Report to Congress on the Benefits and Costs of Federal Regulations reports that, according to agency analyses, the estimated annual costs of rules review by OMB and finalized in FY 2012 total between $14.8 billion to $19.5 billion, not the over $200 billion identified in the report.

The estimated net benefits of rules reviewed by OIRA are based on prospective agency analyses, and the rules included in this report could be candidates for a retrospective analysis after they have been fully implemented.

Sen. Portman

I understand that even at current staffing levels your office has been working hard to reduce the length of OIRA regulatory reviews. Everyone supports eliminating unnecessary delay. But in my mind, we want to ensure more rigorous regulatory analysis rather than simply faster review. A recent study found that longer and more thorough OIRA review is associated with higher-quality Regulatory Impact Analysis at agencies and better explanation of how an agency used the analysis to inform its decisions.[3]

- **What must OIRA do to help ensure that speedier review does not sacrifice the quality of Regulatory Impact Analysis and the quality of decisions informed by that analysis?**

As I mentioned in my testimony, OIRA's goal is not to speed up the review of rulemakings at the expense of quality. In fact, I stated that while unnecessary delays can be harmful, OIRA's consideration of Federal regulations must first and foremost uphold the standards of analysis and decision making the Executive Orders establish.

[3] Jerry Ellig & Rosemarie Fike, *Regulatory Process, Regulatory Reform, and the Quality of Regulatory Impact Analysis*, Mercatus Center Working Paper, George Mason University, July 2013.

Sen. Portman

As you know, there is widespread and bipartisan agreement about the need for permitting reform. The President's Jobs Council recognized that we "can take a few simple steps—without undercutting the protections that our regulatory system provides—to smooth and streamline the process for obtaining permits."[4] This recommendation flows from studies by the Chamber of Commerce and the Business Roundtable, and such permitting reforms are supported by the AFL-CIO, Building and Construction Trades, and other labor leaders, who recognize that improving our federal permitting process is essential to renewed capital investments and jobs.

The Federal Permitting Improvement Act—which I introduced with Senator McCaskill and has a growing list of bipartisan cosponsors, including you—is modeled on the commonsense and bipartisan permit-streamlining reforms of the 2006 and 2012 transportation bills and recommendations from the President's Jobs Council and other recent studies.

The bill would improve the permitting process for major capital projects in three basic ways: (1) better coordination and deadline-setting for permitting decisions; (2) enhanced transparency through early agency consultation and an online permitting "dashboard" to track the status of approvals; and (3) reduced delays from strategic litigation. It would not alter substantive environmental standards or safeguards, but instead seeks to create a smarter, more transparent, better-managed process for government review and approval of major capital projects.

In March 2012, President Obama issued Executive Order 13604, aimed at "Improving Performance of Federal Permitting and Review of Infrastructure Projects." The implementation plan is aimed at (1) more efficient and effective review certain projects, culminating in faster permit decision-making and review timelines; and (2) transparency, predictability, and accountability for infrastructure permitting. According to the White House, since the President issued Executive Order 13604, agencies have expedited their review of 50 major projects, 22 of which have completed the federal permitting process.

A significant aspect of the President's permitting initiative was a "dashboard" website containing a searchable database of information for certain projects selected as part of the initiative. My Federal Permitting Improvement Act (S. 1397) includes the creation of a permitting "dashboard" similar to the White House initiative. This dashboard—which would be available for a larger number of projects and provide information on the status of permits, approvals and NEPA reviews—would provide more transparency and accountability in the permitting process.

As part of its process of reviewing draft rules, OIRA encourages coordination among various agencies and entities involved in the rulemaking process. Similarly, one of the

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[4] President's Council on Jobs and Competitiveness Report.

tenets of the Federal Permitting Improvement Act is early coordination among the agencies engaged in the permitting review process. This kind of early coordination leads to greater cooperation among agencies and a more efficient review. We have seen documented successes of these types of permit streamlining provisions through the implementation of the American Recovery and Reinvestment Act and the last two highway transportation bills (SAFETEA-LU and MAP-21).

- **As OIRA Administrator, what do you see as the benefits of early coordination among agencies involved in the permitting review process in terms of streamlining the federal permitting process?**

As the OIRA Administrator, I do not have primary responsibility for the Administration's efforts to modernize and improve the efficiency of the Federal infrastructure permitting process. That said I believe these efforts have demonstrated that early consultation and coordination among agencies with potential permitting or review responsibilities can help identify and resolve potential issues of concern early in the process, thus avoiding unnecessary delays.