

Toward a 21st Century Regulatory System

United States Senate
Committee on Homeland Security and Government Affairs

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Chairman Johnson, Ranking Member Carper, and Members of the Committee thank you for the opportunity to appear today. In this testimony, I wish to make three basic points:

- Virtually everyone agrees that we need some type of regulatory reform, but understanding current burdens and reform attempts can guide any reform effort,
- Regulations have a profound impact on economic performance, affecting employment patterns, the costs of household goods, and the price of energy and health care, among other impacts. During the past six years, the administration has added more than \$95 billion in annual regulatory burdens, and
- Balanced regulatory reform that retrospectively examines past rules and prospectively evaluates the costs, benefits, and regulatory alternatives is an international standard practice, not a partisan exercise.

Let me provide additional detail on each in turn.

The Scale of Regulatory Burdens

Although President Obama has issued four major executive orders outlining his vision for the regulatory state, to date there have been relatively modest efforts to “modify, streamline, expand, or repeal” burdensome regulations. Instead, the administration has implemented more regulations to expand than to repeal.¹

In this regard, here are a few facts on regulations taken directly from the administration’s Office of Information and Regulatory Affairs (OIRA) and the Government Accountability Office (GAO):

- Since FY 2000, the paperwork burden from cabinet-level agencies has increased from 7.1 billion hours to more than 9.3 billion hours, a 30 percent increase.²
- Currently, Americans must manage more than 9,200 government forms, imposing 9.9 billion hours of paperwork.³
- In 2010, federal agencies published 100 “major” rules, more than any other year in the history of the Congressional Review Act (see Chart 1).
- OIRA data make plain that FY 2012 was one of the costliest years for regulation in at least a generation.⁴

Chart 1

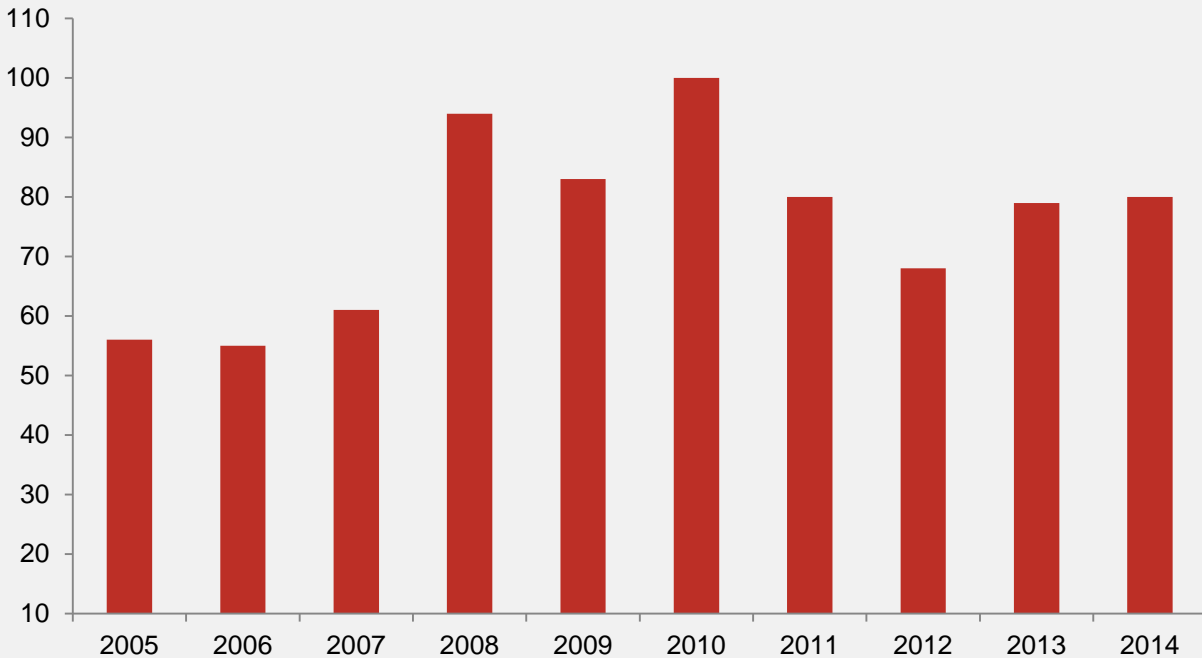
¹ “Improving Regulation and Regulatory Review,” Executive Order 13563 of January 18, 2011.

² Office of Management and Budget, Information Collection Budget of the United States Government 2014.

³ Office of Information and Regulatory Affairs (OIRA), Inventory of Currently Approved Information Collections.

⁴ Office of Information and Regulatory Affairs (OIRA), 2013 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities.

Number of Major Rules Published (2005-2014)



The American Action Forum (AAF), in an effort to track 100 percent of federal rulemakings, has tallied the cumulative burden for every year since 2008. Looking to document the impact beyond “economically significant” rules, AAF has tracked thousands of regulations during this period. All of the figures listed below are merely data recorded directly from the Federal Register, the “Daily Journal of the United States Government.” AAF does not re-estimate agency figures. If an agency states that a rule will impose \$3 billion in costs, or save \$3 billion, we record the data as listed each day. To help the public keep track of all the regulations issued by the government, the American Action Forum will soon be launching a website that allows people to generate their own regulatory report based on the Federal Register.

Economic Implications

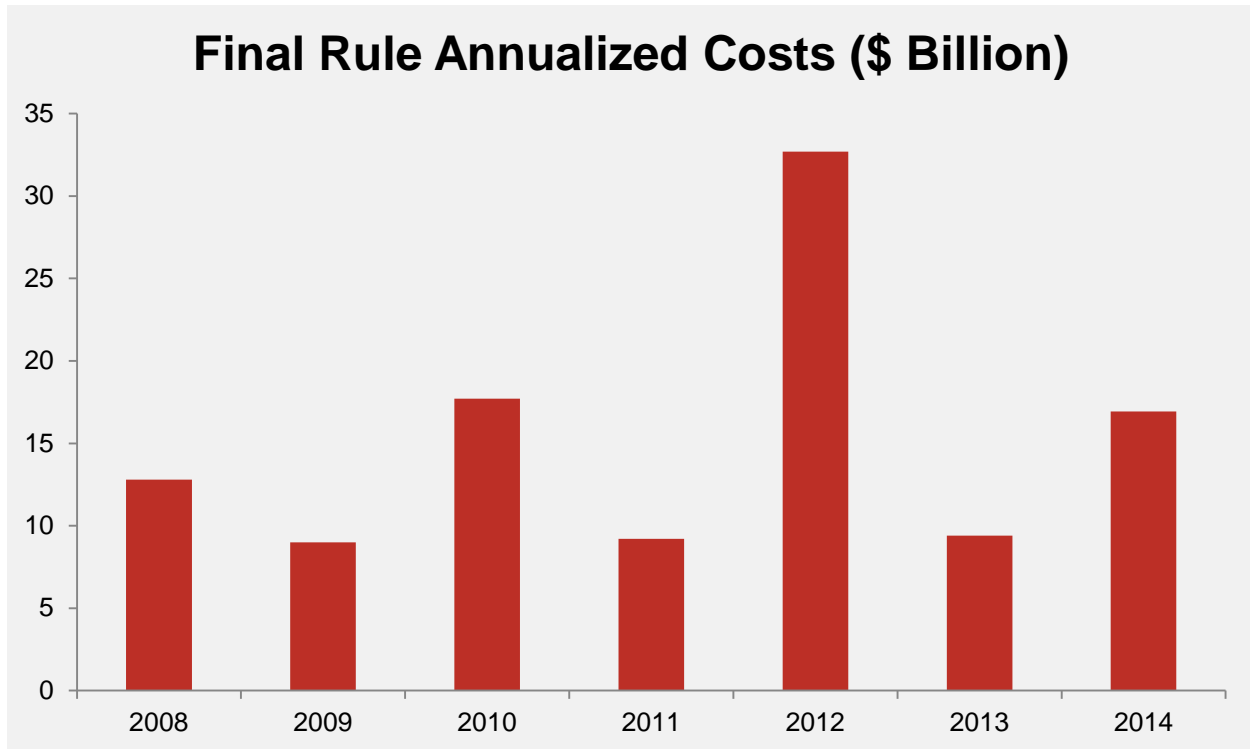
From an economic perspective, the totals are sobering: more than \$100 billion in new annual costs since 2008. This is approximately equal to increased federal tax revenue in FY 2014 and FY 2015 stemming from the higher estate, capital gains, and income taxes adopted in 2012. The U.S. has averaged \$15 billion in new regulatory costs annually since 2008. See Chart 2 below.

These regulatory burdens do not exist in isolation. Someone must eventually bear the cost, either through reduced wages, lower profits, or higher prices for every consumer. In 2014, AAF took a snapshot of a few recent regulations that will increase prices for consumers. From higher vehicle costs to pricier food, here is a brief overview of how consumer goods are more expensive because of federal regulation:

- Passenger Vehicles: \$3,100
- Household Products: \$1,639

- Mortgage: \$362 (annual)
- Energy: \$135 (annual)
- Health Care: \$108 (annual)
- Food: \$14 (annual)

Chart 2

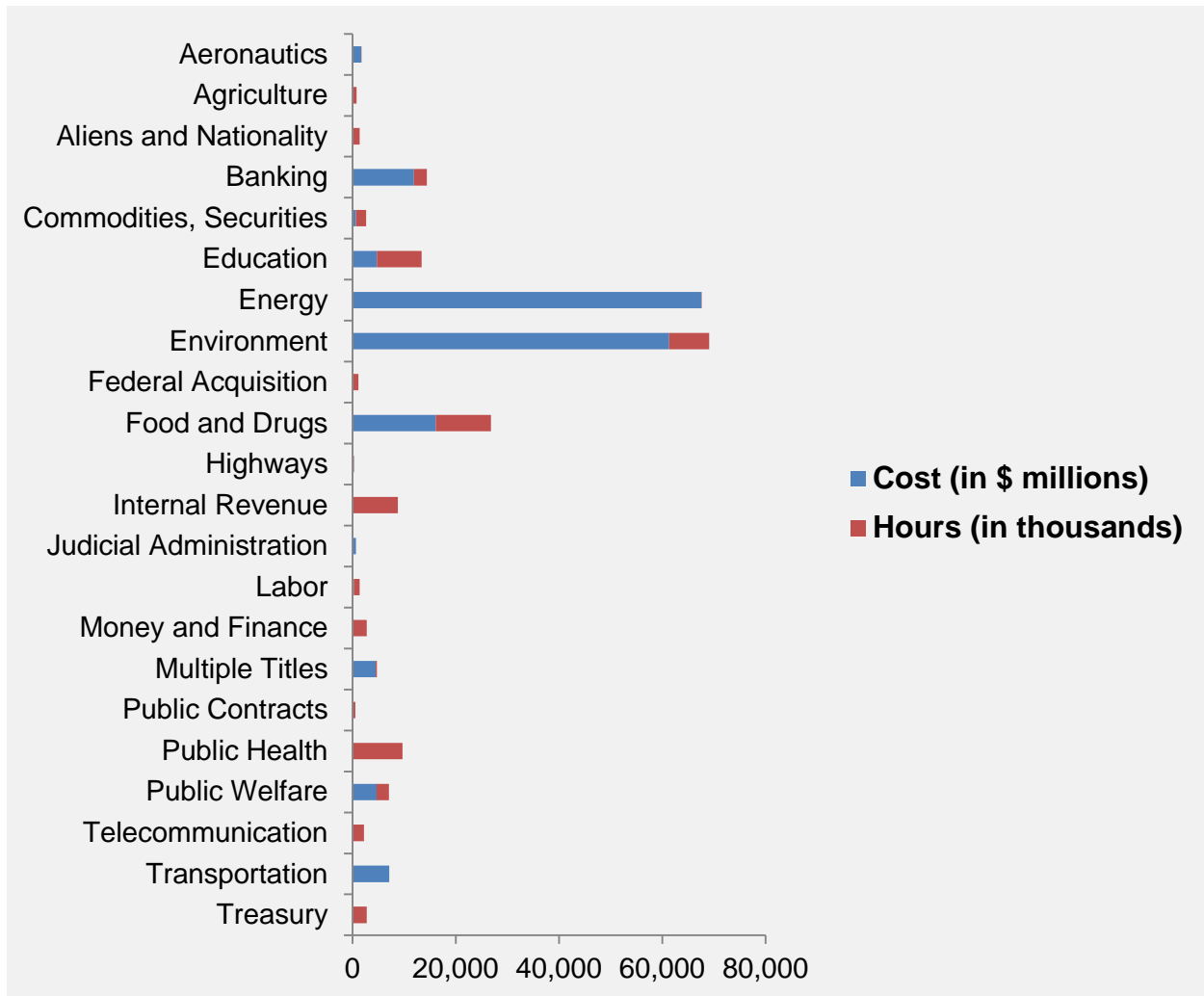


As costs for consumers increase, there will be a natural drop in the demand for goods, depending on how sensitive households are to the higher prices. As demand drops, employment effects will eventually materialize. Although the current unemployment rate is low, heavily regulated industries essentially transfer jobs to government-preferred industries. For example, according to the Bureau of Labor Statistics, since 2008 Ohio has lost 1,088 fossil-fueled power plant jobs, or a 21.8 percent drop.⁵ Meanwhile, in the last three years, employment in solar power generation nearly tripled from just 480 jobs to approximately 1,500. The economy will always attempt to trend toward full employment, but regulation creates hidden distortions that favor certain industries at the expense of others.

We can see the impact of regulation by industry in Chart 3 below, which tracks regulatory burdens across industries from regulations issued in 2014. The vast majority of the costs are distributed among energy and environment.

⁵ American Action Forum, “On Jobs and Regulation: In Graphs,” available at <http://americanactionforum.org/insights/on-jobs-and-regulation-in-graphs>.

Chart 3



It's clear from the graph above that environment and energy are the runaway cost leaders. In what may be a surprise to some, new energy efficiency standards on the manufacturing industry actually added more burdens than environmental regulations. In terms of net present value costs, energy topped environmental: \$67.5 billion to \$61.2 billion. However, a vast majority of these overall burdens will affect the manufacturing industry.

In sum, regulation has been an important feature of the U.S. for decades, generating benefits, but also significant costs. That reality has motivated every President since Jimmy Carter to sign an executive order outlining their vision for fundamental regulatory reform. President Obama followed in their footsteps as well, but carrying out that vision has led to more stumbles than successes.

Essential Principles of Regulatory Reform

Despite reform attempts, every year Democrats and Republicans bemoan the current state of regulation. President Obama continued that tradition when he issued Executive Order 13,563,

demanding that the “regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.” It also called on regulators to look back at existing regulations to “modify, streamline, expand, or repeal” those that were redundant or ineffective.

After more than four years of regulatory reform, it’s clear that regulators have sought to expand regulations more than modify. Retrospective review reports are filled with more new proposals designed to address current issues, than regulatory reviews designed to examine whether past rules succeeded or failed. For example, energy efficiency standards are included in retrospective reports, even though they are implementing new standards. The Department of Education continues to insist the new “Gainful Employment” regulation that adds billions of dollars in costs and millions of burden hours was somehow designed to scrutinize “existing significant regulations.” It clearly was not.

Regulators either engage in an honest attempt to examine the regulatory state by looking back at past rules and measuring their costs and benefits, or they add new burdens that address current problems. Too often, it is the latter.

But given the history of regulatory reform, it is not too surprising that the current efforts have fallen short. Almost two decades after passage of the Congressional Review Act (CRA), regulators still fail to follow its principles. In a recent report from the Administrative Conference of the United States, Curtis Copeland found 43 major and significant rules that were never submitted to Congress or the Government Accountability Office, as required by the CRA.⁶ Even with the Paperwork Reduction Act, agencies managed to violate it more than 200 times annually, with the Department of Health and Human Services leading all agencies with 80 violations.⁷

It is because regulatory reform has failed so often in the past that we continue to talk about its place in the future. Broadly, regulatory reform should contain three principles:

- Codify the current informal executive orders on cost-benefit analysis and apply those principles to every federal agency, with the prospect of judicial review if agencies fail to conduct the legally required analyses.
- Insert intelligible principles in future legislation that limit new regulation, enhance cost-benefit guidelines, and place a timeline for reviewing the efficacy of new rules.
- Create a formal system to retrospectively analyze the past regulations of all agencies. A formal bipartisan commission with diverse expertise could examine existing regulations and submit recommendations to Congress.

Currently, there is nothing stopping the next administration from ending the process of centralized review and abolishing generations-old principles of cost-benefit analysis. Despite the

⁶ Administrative Conference of the United States, “Congressional Review Act: Many Recent Final Rules Were Not Submitted to GAO and Congress,” available at <https://www.acus.gov/sites/default/files/documents/CRA%2520Report%25200725%2520%25282%2529.pdf>.

⁷ American Action Forum, “Delays, Mistakes, and Violations: A Review of OMB’s Information Collection Budgets,” available at <http://americanactionforum.org/insights/delays-mistakes-and-violations-a-review-of-ombs-information-collection-budg>.

success of cost-benefit analysis, it is not applied equally across the federal government, and even within the executive branch, agencies sometimes omit crucial information or fail to consider regulatory alternatives. Codifying the current executive orders on reform, including the President's orders, would enshrine sound analysis into law. By inserting language on judicial review, another branch of government would be able to exercise important oversight.

Too often, agencies take the broad authority that Congress grants and abuse that power. For instance, in the last few years alone, federal courts have struck down more than a dozen regulations that exceeded the scope that Congress contemplated.⁸ AAF experts Ike Brannon and Sam Batkins first broached the idea of an "upstream" approach to regulation in 2011. They wrote:

"This approach would insert specific guidelines into all major legislation imposing federal mandates, including: 1) requiring agencies to conduct reviews of regulations once implemented, 2) demanding agencies rescind duplicative rules, 3) placing a limit on the number of regulations an agency could promulgate during implementation of a particular law, 4) establishing regulatory 'pay as you go' that would require the elimination of a rule whenever a new rule is adopted, and 5) prohibiting new regulations where costs exceed benefits."⁹

Congress does not have to adopt all five reforms, but including more specific guidelines for agencies could reform the regulatory process and give agencies a greater margin for error when challenged in court. This upstream approach would abolish the current "whack-a-mole" tactics that target current controversial rules and instead focus on crafting sound rules before they become contentious.

Finally, there must be a formal structure to evaluate past regulations to determine whether these measures are still generating significant benefits at an acceptable cost. This is not a partisan exercise. The OECD recommends that nations "adopt a dynamic approach to improve regulatory systems over time to improve the stock of existing and the quality of new regulations."¹⁰

Currently, there are more than 2,400 federal paperwork requirements, totaling 9.9 billion hours of compliance time for Americans. This is not solely the fault of the current administration, but generations of regulatory accumulation that policymakers have often overlooked. Whether addressing these burdens is conducted by an independent commission or an independent agency, there must be an outside arbiter that forces regulators to examine past rules. The current agency led process will produce piecemeal reforms at best and completely ignore past rules at worst. For example, in their last retrospective report, the Department of Energy failed to list a single rulemaking that could reduce costs or paperwork burdens. Without an effort to rescind or amend duplicative rules, any regulatory reform effort will garner only partial success.

⁸ American Action Forum, "President's Regulatory Record in the Courts," available at <http://americanactionforum.org/research/presidents-regulatory-record-in-the-courts>.

⁹ Regulation Magazine, "Obama, Ryan, and the Future of Regulatory Reform," available at <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2011/9/regv34n3-2.pdf>.

¹⁰ OECD, "Guiding Principles for Regulatory Quality and Performance," available at <http://www.oecd.org/fr/reformereg/34976533.pdf>.

Regulatory Reform Abroad

Curbing regulatory growth is not only a bipartisan issue, but also an international concern, as nations around the globe craft pro-growth reform efforts. From the United Kingdom, to Australia, sensible regulatory policy is hardly a U.S. concern.

The United Kingdom has already adopted an aggressive regulatory reform system that contains the following elements: “1) operating a ‘one in, two out’ rule for business regulation, 2) assessing the impact of each regulation, 3) reviewing the effectiveness of government regulations, 4) reducing regulation for small businesses, 5) improving enforcement of government regulations, and 6) using alternatives to regulation.” Although there are legal hurdles in the U.S. to adopting a “one in, two out,” framework, the other items above are already practiced with some regularity on the federal and state level; however, few are codified, and even fewer apply to independent agencies.

If a “one in, two out,” regulatory budget is adopted in the U.S., it could save billions of dollars. The UK reports that their budgeting system for regulation has saved £1.19 billion, or approximately \$1.83 billion, since the Cameron government instituted the program six years ago.¹¹

According to a report from the Organisation for Economic Co-operation and Development (OECD), South Korea “has made impressive progress in a very short time period implementing regulatory reform to streamline regulations.”¹² Korea has already reviewed more than 11,000 regulations, halving their number, and reforming another 2,400 rules. Needless to say, OECD has issued no such report highlighting U.S. efforts to halve the number of burdensome regulations.

Australia too, has aggressively sought to reform their regulatory state. Prime Minister Tony Abbott announced March 26, 2014 as “Repeal Day,” when Parliament would “abolish regulation and legislation that’s outlived its usefulness or is doing more harm than good.” Prime Minister Abbott pledged to remove more than 9,500 regulations, saving Australians more than \$700 million annually.¹³ For perspective, the U.S. adopts roughly 3,000 regulations annually. Australia’s commitment to reform extends beyond a single day, with a schedule of two “repeal days” annually and deregulatory units within each agency.

The U.S. regulatory system should also be an international model, as opposed to an aberration. Emulating just a handful of the reforms above would lead to a more rational and more effective regulatory state. OECD has 12 specific recommendations for reform and the U.S. has millions of

¹¹ Department for Business and Innovation Skills, The Seventh Statement of New Regulation, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/271446/bis-13-p96b-seventh-statement-of-new-regulation.pdf.

¹² OECD, Korea: Progress in Implementing Regulatory Reform, available at <http://www.oecd.org/regreform/38238965.pdf>.

¹³ Regulation Magazine, “Australia’s Regulatory Bonfire,” available at http://object.cato.org/sites/cato.org/files/serials/files/regulation/2014/10/regulationv37n3-8_7.pdf#page=13.

different reasons for codifying internationally recognized principles for reform. Our overseas competitors are acting, and so should the U.S.¹⁴

Conclusion

All Members of this Committee would agree that we need a regulatory system that encourages entrepreneurship, promotes economic growth, and protects the health and safety of Americans. There are doubtless benefits associated with the regulatory costs outlined, but we cannot ignore the cumulative impact of regulations or the burden on small businesses that are ill-equipped to handle thousands of hours of paperwork.

By introducing needed transparency across all federal agencies, measuring costs and benefits of new rules, and reviewing past regulations, we can achieve the dual goals of promoting economic growth and protecting public health.

Thank you. I look forward to answering your questions.

¹⁴ OECD, Recommendation of the Council on Regulatory Policy and Governance, available at <http://www.oecd.org/gov/regulatory-policy/49990817.pdf>.