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**TESTIMONY OF
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OFFICE OF INFORMATION AND REGULATORY AFFAIRS
BEFORE THE SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
FEDERAL REGULATION: HOW BEST TO ADVANCE THE PUBLIC INTEREST?
APRIL 14, 2011**

Chairman Lieberman, Ranking Member Collins, and Members of the Committee, I am grateful to have the opportunity to appear before you today to discuss Federal regulation and regulatory review. I will be focusing on Executive Order 13563, “Improving Regulation and Regulatory Review,” issued on January 18, 2011. I will also briefly discuss the Presidential Memorandum, “Regulatory Flexibility, Small Business, and Job Creation,” issued on January 18, 2011, which is focused on protecting small business from excessive regulation, and the Presidential Memorandum, “Administrative Flexibility,” issued on February 28, 2011, which is focused (among other things) on streamlining regulations imposed on State, local, and Tribal governments.

As the President has made clear, Executive Order 13563 is meant to lay the foundation for a regulatory system that protects public health, welfare, safety, and our environment, while also promoting economic growth, innovation, competitiveness, and job creation. It requires a number of concrete steps to achieve that overriding goal.

Let me begin with a few words by way of background. Since September 30, 1993, the process of regulatory review has operated under Executive Order 12866, issued by President Clinton, which builds on the framework established by Executive Order 12291, issued by President Reagan on February 17, 1981. Executive Order 12866 sets out a number of principles and requirements. Among other things, it calls (to the extent permitted by law) for careful consideration of costs and benefits, for tailoring regulations to impose the least burden on society, for selection of the approach that maximizes net benefits, for consideration of

alternatives, and for a process of interagency review, coordinated by the Office of Information and Regulatory Affairs. Such a process has been in effect for thirty years.

Executive Order 13563, issued on January 18th of this year, has six provisions designed to supplement and to improve that process. First, it reaffirms the principles, structures, and definitions established by Executive Order 12866. In doing so, it also stresses the need for predictability and certainty, for ensuring that the benefits of regulation justify the costs, and for using the “least burdensome tools for achieving regulatory ends.” It emphasizes the need to “measure, and seek to improve, the actual results of regulatory requirements.”

Second, Executive Order 13563 calls for increased public participation. It 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, it 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.

Third, Executive Order 13563 directs agencies to take steps to harmonize, simplify, and coordinate rules. It 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.

Fourth, Executive Order 13563 directs agencies to consider flexible approaches that reduce burdens and maintain freedom of choice for the public. Such approaches may include, for example, public warnings or provision of information.

Fifth, Executive Order 13563 calls for scientific integrity. It asks each agency to ensure the objectivity of the information on which it relies to support its regulatory actions.

Sixth, and finally, Executive Order 13563 calls for retrospective analysis of existing rules. It asks for “periodic review” to identify “rules that may be outmoded, ineffective, insufficient, or excessively burdensome.” It directs agencies to produce preliminary plans for periodic review of significant rules and to submit them to OIRA within 120 days. Such plans are due on May 18. By requiring retrospective analysis, or “look-back,” Executive Order 13563 is aimed at the “stock” of existing regulations as well as the “flow” of new requirements.

The Presidential Memorandum on Regulatory Flexibility, Small Business, and Job Creation is focused especially on the “essential role” of small businesses in the American economy. It directs agencies to consider methods “to reduce regulatory burdens on small business.” Under the Regulatory Flexibility Act (RFA), agencies may consider such flexibilities as extended compliance dates, simplified reporting and compliance requirements, and partial or total exemptions. The Memorandum specifically requires agencies to provide an explanation when they do not offer such flexibilities in proposed or final rules. As the President wrote in the Wall Street Journal on January 18, “today I am directing federal agencies to do more to account for—and reduce—the burdens regulations may place on small businesses.”

The Presidential Memorandum on Administrative Flexibility is focused on State, local, and Tribal governments. Emphasizing that such governments have sometimes been subject to “onerous” requirements, the memorandum notes that it is possible to “reduce unnecessary regulatory and administrative burdens.” It emphasizes that Executive Order 13563 applies to State, local, and Tribal governments. It directs the Director of the Office of Management and Budget to explore how best to eliminate “unnecessary, unduly burdensome, duplicative, or low-priority recordkeeping requirements.” It also directs agencies, within 180 days, to take actions “to identify regulatory and administrative requirements that can be streamlined, reduced, or eliminated.”

I might add that in the recent past, numerous agencies have reached out to the public for ideas about how best to revisit existing regulations. For example, the Environmental Protection Agency, the Equal Employment Opportunity Commission, the General Services Administration, the Pension Benefit Guaranty Corporation, the Small Business Administration, the Social Security Administration, and the Departments of Commerce, Defense, Energy, Homeland Security, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, and the Treasury have all issued Federal Register notices, asking the public to assist in the identification of rules that warrant reassessment.. In addition, the Environmental Protection Agency and the Departments of Homeland Security, Labor, State, and Transportation have gone one step further, creating websites to engage the public in the process of retrospective review. The Environmental Protection Agency and Department of Transportation have also held public meetings to solicit additional feedback about retrospective review. And in recent months,

agencies have taken a number of concrete steps to rethink, modify, streamline, and reduce existing regulatory requirements.

Executive Order 13563 and the two presidential memoranda create strong foundations for improving regulation and regulatory review. I greatly appreciate the Committee's interest in this topic and look forward to answering your questions.