

*As Prepared for Delivery*

## **Reforming Government's Regulatory System**

Joint Committee Meeting of the Environment, Technology,  
& Regulatory Affairs Division

*Remarks by*

**THOMAS J. DONOHUE**

President and CEO, U.S. Chamber of Commerce

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### **Introduction**

Thank you very much and good morning everyone.

Let me begin by thanking you for your service to the Chamber. Our committees play an instrumental role in establishing our policy positions. We appreciate your input and your time. I especially appreciate the leadership of the committee chairs—Harry Alford and Kathy Beckett. Thank you for what you do.

And then there's Bill Kovacs. No one in this town understands the regulatory system as well as Bill does—what it does right, what it does wrong, and how to make it work better for all Americans.

Last month voters sent a clear message that they believe their government is not working properly and must be reformed. Modernizing our regulatory system, which is by the far the fastest growing part of our government, must be at the heart of any government reform agenda. And for the Chamber, it is.

Now, I understand that when the business community complains about regulations, many people believe that it's just trying to cut corners. For some, anything we have to say about regulations will be suspect.

In fact, businesses recognize the need for regulations. Many rules on the books should have been put there and ought to stay there. They help establish the economic rules of the road. They help ensure workplace safety and protect public health. They provide needed standards and procedures on how to operate equipment, handle food properly, and keep the environment clean.

To be sure, there will be regulations that the Chamber and business think are excessive and unnecessary. Others will disagree and we'll have those debates on a case-by-case basis. Nothing wrong with that.

But there is a larger discussion we need to have and it's one that should unite Americans and their competing interests, not divide them. It's the compelling need to reform the regulatory process itself—not for the purpose of steering it to specific outcomes, but to ensure that we have rules that really work, that are fair to all, that meet the test of common sense, and that are compatible with our principles of economic freedom and our strong desire for jobs and growth.

### **The Case for Reform**

Unfortunately, that's not the kind of system we have today.

Our regulatory system is increasingly opaque and driven by political agendas. It lacks basic accountability. It often employs flawed data and questionable science. It ignores congressional intent and too often prevents citizens from weighing in on proposed rules in any meaningful way.

The consequences of this flawed system are not always readily apparent to the American people, or the media. But the impacts are real—and growing.

According to a former director of the Congressional Budget Office, every year since 2009, we've added about \$150 billion in new compliance costs. This year we're on target to do an astounding \$200 billion. In fact, total compliance costs now exceed \$2 trillion a year.

Much of that cost will prove to be necessary even after reform. But with a price tag that high, you would think there would be more questions and more scrutiny. Do we really have to pay that much? Are we getting our money's worth? What are the impacts on jobs, on small businesses, on our ability to compete around the world, and on our economic and personal freedoms? Why does it take so long to build anything anywhere in this country? Can we do it better and more efficiently?

Whether they happen to believe in more regulations or less, all Americans should want to know the answers to these questions.

When it comes to jobs—which is the word and the priority we have plastered all over the front of our building—I would like to tell you what the total impact of regulations on employment really is. But I can't.

For years, the federal agencies have defied a law requiring them to determine the ongoing impact of their regulations on jobs. There have been a number of independent studies that have attempted to fill the knowledge gap left by government. I will cite some of that research today. But we have to wonder, what are the agencies afraid of? What do they fear the American people will find out?

The business community and most Americans *are* willing to pay for sound and thorough regulatory safeguards *if* government agencies were more honest about the data and science they used ... *If* they allowed it to be peer-reviewed and examined by others ... *If* they accurately and transparently assessed benefits ... And *if* they did not routinely overstep congressional intent.

In addition, our permitting process has become so restrictive—and the system held so captive by lawyers, uncompromising environmentalists, and Not-In-My-Backyard opponents—that it’s practically impossible to build anything, anywhere, anytime. And that includes green energy projects.

As a result, we’re leaving hundreds of thousands of jobs and hundreds of millions of dollars in economic growth on the table.

### **Regulatory Overdrive**

It’s an especially timely moment to make reform a priority because we currently have a government that has shifted into regulatory overdrive. The administration knows that time is running out and there is every incentive and temptation to ram new rules through the pipeline—and never mind the process, the research, the costs, or the benefits.

Some 4,000 new rules are being issued every year. In just the last few years, we’ve had a flood of rules under Obamacare, Dodd-Frank, and dozens of other regulatory programs. Many have yet to be written or finalized.

In the next few years, we face a murderers’ row of new, multi-billion dollar regulations. The day before Thanksgiving, EPA released its ozone rule, which could cost the U.S. economy over 600,000 lost jobs annually.

On Dec. 19, EPA will issue a final rule for the disposal of coal ash from power plants, which could put 65,000 to 315,000 Americans out of work.

By early next year, the Fish and Wildlife Service is expected to finalize new “critical habitat” rules—which would expand the Endangered Species Act in an unprecedented way.

Jan. 8 is the deadline for issuing a final rule restricting greenhouse gas emissions from future power plants. In June, EPA is due to put out a final version of its rule for cutting greenhouse gases from the nation’s *existing* power plants.

Next year, OSHA plans to issue its final silica rule, which will hurt scores of industries and hamper energy development.

Despite thousands of final rules issued by federal agencies each year, only a handful carry the greatest costs and regulatory impact. Those are the ones we really care about. Those are the ones that ought to be subject to the greatest scrutiny and held to the highest standards. But they are not.

Reforming the government's regulatory system is one of the most overlooked opportunities we have to generate faster economic growth and create more jobs—and do all that while actually improving the health and safety protections Americans want and deserve.

So how do we do it? Here are four commonsense, bipartisan principles we should follow to fix our system and make it work for our economy and our society.

### **Restore Accountability**

The first principle is to restore accountability.

Congress needs to step up its game and exercise rigorous oversight of the federal agencies. Congress should insist on an up-or-down vote on the largest and most costly regulations. Many argue Congress couldn't handle that level of review—it would take too much time. Well, guess what? There were 30 regulations with a cost exceeding \$1 billion from 2000-2013. Reviewing two or three rules a year is both warranted and doable.

Congress should impose a greater burden of proof on agencies to demonstrate that the costliest rules are truly needed and that they are pursuing the least costly alternatives to achieve their goal, as required by law.

Congress should hold independent regulatory agencies to identical standards as executive branch agencies for high impact rulemakings. That means they would be required to conduct a cost-benefit analysis and regulatory impact analysis.

And Congress can reclaim some of the authority it has surrendered to the regulatory agencies by more carefully crafting legislation so that congressional intent is perfectly clear and regulators' discretion in writing rules is limited.

Whenever Congress decides to recede into the background and fails to exercise oversight, the executive branch almost always steps in and overreaches. For example, Congress' failure to exercise its authority over the future of the Internet has emboldened the president to urge the Federal Communications Commission to regulate broadband as a public utility—like it's a 1930's telephone monopoly.

This represents unprecedented interference by the executive branch in the decision making of an independent regulatory agency. It violates congressional intent of applying a "light-touch" policy framework to the Internet that has enabled the American digital economy to grow and prosper in the global marketplace.

Such a move will discourage necessary investment in broadband networks and sock consumers with \$17 billion in new federal, state, and local fees tacked on to their monthly bills.

This is just one of many examples. The point is Congress must reclaim its authority and vigorously exercise its oversight function. It has irresponsibly surrendered too much authority and discretion to the detriment of our economy and jobs—and by doing so, called its own relevance into question.

For their part, agencies need to follow both the letter and the spirit of the law.

The Government Accountability Office, for example, has taken EPA to task for failing to measure the impact its rules have on jobs, as required by law. And when the agency does, it too often uses murky economic models or dated information.

The Small Business Administration's Office of Advocacy has faulted a number of agencies for failing to measure the impact of regulations on small businesses—again, as required by law. This is important because the regulatory costs for companies with fewer than 20 workers are 36% higher per employee than they are for bigger firms.

### **Ensure Transparency**

The second reform principle is greater transparency.

Nothing would ensure greater transparency than the elimination of sue and settle agreements.

Sue and settle is a sweetheart deal between a government agency and a like-minded interest group. This is where environmental groups sue EPA or another federal agency, and with little to no push back, the agency agrees to a settlement, and a court signs off.

As a result, the key decisions about how and when to issue new regulations are made in secret, entirely outside of the normal rulemaking process.

Unfortunately, many federal agencies willingly subject themselves to these agreements. EPA has deliberately chosen not to defend itself in lawsuits brought by advocacy groups at least 60 times between 2009 and 2012. These settlements directly resulted in EPA agreeing to publish more than 100 new regulations, many of which impose compliance costs in the tens of millions and even billions of dollars.

Another way to enhance transparency would be to require the agencies to divulge all the information and data they use in a rulemaking and allow citizens the right to challenge it—rights they do not enjoy today.

### **Allow Participation by Stakeholders**

The third principle is to allow meaningful participation by stakeholders and citizens.

The Government Accountability Office found that about 35% of major regulations are issued without a public comment period.

For the regulatory system to work properly, regulators must get the facts, the economics, and the science correct; otherwise, the regulatory process is merely a political process. At the least, agencies should be required to inform the public of pending regulatory decisions on high impact rules earlier in the process, share its data and economic models, and allow adequate time for comments.

### **Safe, But Swift**

The fourth principle concerns the permitting process. Here it is important to draw a distinction between the rulemaking process and the permitting process.

To put it simply, the permitting process is often too slow and the rulemaking process is often too fast. In the rulemaking process, there are tight and often unreasonable deadlines for stakeholders to comment, no matter how impactful the regulation. And, as I have discussed, sue-and-settle agreements often include deadlines for promulgation of rules that can't be challenged in court. They are, in fact, ordered by the court.

In the permitting process, there are no hard deadlines for environmental reviews and legal challenges, allowing projects to be killed, delayed, or litigated endlessly.

So the fourth principle is simple: When it comes to the permitting process, let's be safe, but swift.

Today, major energy, infrastructure, and other projects cannot be built or even granted a permit because of a broken environmental review process. The lack of deadlines for action and poor coordination among agencies means that critical projects are delayed for years or killed outright.

When the Chamber conducted its Project/No Project study a few years ago, at that point in time 167 renewable energy projects had been stopped by activist groups, who get zoning laws changed, oppose permits, file lawsuits, and bleed projects dry of their financing. On that basis alone, the environmental community should be first in line with the Chamber and others to reform the permitting process.

They may not like it, but businesses can take no for an answer on a permit. What we can't tolerate is no answer at all.

Multiply what's happening at the federal level with all the time-consuming delays and multiple requirements at the state and local level, and it's a prescription for getting nothing done and throwing a lot of people out of work.

We can do better. When it comes to permitting, we don't need to choose between speed and safety—we can have both and we need both.

## **A Reform Agenda**

Based on these principles, the Chamber is going all-in on commonsense regulatory reform.

Of course we'll continue to vigorously represent our members in the agencies, in the Congress, and the courts—working on specific rulemakings to improve them, change them, properly implement them, and in a few cases, to stop them.

Thanks to your advice and support, the Chamber has built a solid record of achievement when it comes to regulatory relief. Given the onslaught of new rules coming our way, you can expect us to redouble these efforts in the coming year.

And we'll launch a nationwide education campaign to explain to Americans what's at stake. We must reform this government—beginning with the regulatory system—and if we do it right, we can move our economy into high gear, creating more small businesses, more new jobs, and bigger paychecks for our citizens.

But alongside this important work, we're going to make a real push in 2015 to win support and passage of three bipartisan bills to reform and modernize the regulatory system itself.

The first is permit streamlining legislation, which would create a more coordinated and streamlined permitting process for federal regulatory reviews, environmental decision making, and permitting—*without* changing existing standards or environmental safeguards.

The second is the Regulatory Accountability Act, which would reform the regulatory process by increasing transparency during rule development, allowing interested parties access to the data, and making agencies consider alternatives that achieve their objective at a lower cost.

The third is The Sunshine Act, which would bring transparency and accountability to the sue and settle process.

## **Conclusion**

Here's the bottom line: Federal regulatory agencies have grown so powerful over the last two decades that they can resist oversight by Congress and the courts.

Agencies are writing new rules imposing literally billions of dollars of new costs with little or no scrutiny or meaningful involvement by stakeholders and the public.

We can stop this regulatory overreach by replacing it with commonsense and clarity ... by insisting on good government that is accountable, transparent, and efficient ... and by truly balancing the costs and the benefits of proposed rules.

As a nation, we need to ask ourselves some vital questions. Do we want a regulatory system that is open and transparent, or do we want a closed system where government makes all the decisions in a vacuum?

Do we want a regulatory system that's held accountable for its science, data, and results, or do we want a system where the agencies have no checks-and-balances on their actions whatsoever?

Do we want a regulatory system where businesses and workers are free to create jobs and economic growth in a way that protects health and safety, or do we want a system where lawyers and permit-grantors are allowed to obstruct, delay, and kill projects while lining their own pockets?

We need reform.

Thomas Jefferson said: "When governments fear the people, there is liberty. When the people fear the government, there is tyranny."

It's time to set our regulatory system on a better path ...

It's time to restore accountability, transparency, public participation, and efficiency to our regulatory system and our government ...

It's time to unleash the power of businesses large and small to create jobs and growth without unjustified, unnecessary, and overly burdensome rules ...

It's time to listen to the commonsense of the American people, and not be dictated to by a command and control government that thinks it always knows best.

This is what our government reform agenda is all about—and it begins by modernizing what has become a virtual fourth branch of the American government—the regulatory branch.

The reforms we are proposing are not pie-in-the-sky. They have already passed the House with bipartisan support. We also found considerable interest in the outgoing Senate, again, on a bipartisan basis. We expect to find even more support in the new Congress.

We believe we can get the new House and Senate to act. And while we can't say what the president will do, let's pass these reform bills and see what we can make happen.

Thank you very much.

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