Thank you, Chris, for that generous introduction. You have been a friend and colleague for many years, and I greatly appreciate the hospitality that you and AEI have offered me not only today, but also on numerous occasions in the past.

I am also grateful for the excellent work on regulatory policy that has been done at AEI for many years. For a long period, AEI and Brookings operated a joint center for regulatory studies, and the careful research done by the center, and by both AEI and Brookings since that time, has helped to illuminate a wide range of regulatory problems.

Such research is a valuable corrective to a national debate over regulation that has become far too polarized and stylized.

In recent months, some people have stressed the crucial importance of regulatory safeguards -- including rules that reduce deaths on the highways, prevent fraud and abuse, keep our air and water clean, and ensure that the food supply is safe.

Other people have objected to expensive regulations and burdensome mandates that impair growth, competitiveness, and innovation -- and that cost jobs.

In the abstract, both sides have legitimate points. But we can’t solve serious problems in the abstract, and in important ways, the polar positions are stuck in outmoded and increasingly helpful debates from decades ago.

In recent years, we have learned a great deal about regulation. As a result of conceptual and empirical advances, we know far more than during the New Deal and the Great Society, and we have also learned a great deal since the 1980s and 1990s.

We are now equipped with state-of-the-art techniques for anticipating and cataloguing the consequences of regulation, including both benefits and costs.

We know that risks are part of systems, and that efforts to reduce a certain risk may increase other risks, perhaps even deadly ones, thus producing ancillary harms – and that efforts to reduce a certain risk may reduce other risks, perhaps even deadly ones, thus producing ancillary benefits.

We know that flexible, innovative approaches, maintaining freedom of choice, are often desirable, both because they preserve liberty and because they cost less.

We are aware that large benefits can come from seemingly modest and small steps – including simplification of regulatory requirements, provision of information, and sensible default rules, such as automatic enrollment for retirement savings.
We know, more clearly than ever before, that it is important to allow public participation in the design of rules, because members of the public will have valuable and dispersed information about likely effects, existing problems, creative solutions, and possible unintended consequences.

We know that if carefully designed, disclosure policies can promote informed choices and save both money and lives.

We know that intuitions and anecdotes are both unreliable, and that advance testing of the effects of rules, as through pilot programs or randomized controlled experiments, can be highly illuminating.

We know that it is important to explore the effects of regulation in the real-world, to learn whether they are having beneficial consequences or producing unintended harm.

To go beyond an increasingly stale and unhelpful debate, we need to begin with these understandings. Above all, we need to obtain a careful and objective analysis of the anticipated and actual effects of regulations, whether positive or negative. We need to look at evidence and data. We need careful assessments before rules are issued, and we need continuing scrutiny afterwards.

Of course it is true that people’s values differ, and in some cases, the relevant values will lead in a certain direction even if the evidence is clear. What I want to emphasize here is the opposite possibility – that when the evidence is clear, it will often lead in a certain direction even there are differences with respect to underlying values.

If, for example, a regulation would save a lot of lives and cost very little, people are likely to support it regardless of their party identification; and if a regulation would produce little benefit but impose big costs on real people, citizens are unlikely to favor it, regardless of whether they like elephants or donkeys.

On January 18th of this year, President Obama offered a fresh approach to federal regulation – an approach that reflects a lot of new thinking about regulation. The very first paragraph of the executive order he issued on this topic emphasizes that our regulatory system “must measure, and seek to improve, the actual results of regulatory requirements.”

In Executive Order 13563, the President laid the foundations for a regulatory system that protects public health and welfare while also promoting economic growth, innovation, competitiveness, and job creation. The President’s approach promises to eliminate unnecessary regulatory burdens and costs on individuals, businesses both large and small, and state and local governments.

Among other things, the President called for an unprecedented government-wide “lookback” at federal regulation. The lookback requires all agencies to reexamine their significant rules, and to streamline, reduce, improve, or eliminate them on the basis of that examination.

Today, I am able to announce the initial results of this review.

Thirty departments and agencies have risen to the President’s challenge and released action plans to remove what the President has called unjustified rules and “absurd and unnecessary paperwork requirements that waste time and money.”
We are taking immediate steps to eliminate hundreds of millions of dollars in annual regulatory burdens. Over the next several years, these steps have the potential to eliminate billions of dollars in regulatory burdens on individuals, small businesses, and state and local governments.

In fact, over $1 billion in savings are anticipated from just a few initiatives from the Department of Transportation, the Department of Labor, and EPA. And all in all, the plan’s initiatives will save tens of millions of hours in annual paperwork burdens on individuals, businesses, and state and local governments. Eliminating paperwork burdens can make a big difference for individuals and small businesses, which can find it hard to grow if there is too much red-tape.

The sheer range of the plans is truly extraordinary. Some plans list well over fifty reforms. DOT offers seventy regulations on which action will be taken and fifty-five for further study. EPA put forward sixteen high-priority initiatives, intended for completion in the short-term; it also offers fifteen high-priority initiatives for the longer term.

Many of the proposals focus on small business. Indeed, a number of the initiatives are specifically designed to reduce burdens on small business and to enable them to do what they do best, which is to create jobs. Going forward, the Transportation department specifically identifies 19 reforms that would reduce burdens on small business.

Some of the proposed initiatives represent a fundamental rethinking of how things have long been done – as, for example, with numerous efforts to move from paper to electronic reporting. For both private and public sectors, those efforts can save a lot of money. Over the next five years, the Department of Treasury’s paperless initiative will be saving $400 million and 12 million pounds of paper.

Other efforts at updating are a bit less fundamental, practically speaking, but in their way historic – as, for example, with efforts to ensure that the Code of Federal Regulations does not refer to, or impose obligations with respect to, nations that no longer exist, such as Yugoslavia.

We are also rethinking regulations that require use of outdated technologies such as film radiography (which is being phased out at many medical facilities).

Many of the reforms will have a significant economic impact.

Consider this one.

Since the 1970s, milk has been defined as an “oil” and subject to costly rules designed to prevent oil spills. In response to feedback from the agriculture community and the President’s directive, EPA recently concluded that the rules placed unjustifiable burdens on dairy farmers -- and exempted them. The exemption gives whole new meaning to the phrase “don’t cry over spilled milk.” And over the next decade, the exemption will save the milk and dairy industries, including small business in particular, as much as $1.4 billion.

And that is just one example.
• Today, the Occupational Safety and Health Administration is announcing a final rule that will remove over 1.9 million annual hours of redundant reporting burdens on employers and save more than $40 million in annual costs. Businesses will no longer be saddled with the obligation to fill out unnecessary government forms, meaning that their employees will have more time to be productive and do their real work.

• OSHA plans to finalize a proposed rule projected to result in an annualized $585 million in estimated savings for employers. This rule would harmonize U.S. hazard classifications and labels with those of a number of other nations by requiring the adoption of standardized terms.

• To eliminate unjustified economic burdens on railroads, the Department of Transportation is reconsidering parts of a rule that requires railroads to install equipment on trains. DOT plans to refine the requirements so that the equipment is installed only where it is really needed on grounds of safety. DOT expects initial savings of up to $400 million, with total 20-year savings of up to $1 billion.

• EPA will propose to eliminate the obligation for many states to require air pollution vapor recovery systems at local gas stations, on the ground that modern vehicles already have effective air pollution control technologies. The anticipated annual savings? About $67 million.

• The Departments of Commerce and State are undertaking a series of steps to eliminate unnecessary barriers to exports, including duplicative and unnecessary regulatory requirements, thus reducing the cumulative burden and uncertainty faced by American companies and their trading partners. These steps will make it a lot easier for American companies to reach new markets, increasing our exports while creating jobs here at home.

• To reduce administrative burdens and increase certainty, the Department of the Interior is reviewing outdated regulations under the Endangered Species Act to streamline the process, to reduce requirements for written descriptions, and to clarify and expedite procedures for approval of conservation agreements.

• To promote flexibility, the Department of Health and Human Services will be reconsidering burdensome regulatory requirements now placed on hospitals and doctors, to ask whether these requirements are redundant and whether they really benefit patients. For example, the Department will be asking whether transplant hospitals should be required to spend time documenting blood type information that has already been entered into relevant medical databases.

It’s important to note that we couldn’t have come up with these and other reforms were it not for public input from the people that these rules affect. Many of the initiatives come not from Washington, but directly from the American public.

Of course, we don’t only need to look back; we also need to look ahead about how we regulate in the future.
That is why in his Executive Order, the President issued a series of new directives to govern future rulemaking. Those directives are consistent with, and informed by, what we have learned about regulation in recent years.

Let me emphasize four key points.

First, the President made an unprecedented commitment to promoting public participation in the rulemaking process – with a central goal of ensuring that rules will be informed, and improved, by the dispersed knowledge of the public.

Agencies are not merely required to provide the public with an opportunity to comment on their rules; they must also provide timely online access to relevant scientific and technical findings, thus allowing them to be scrutinized.

The President’s Executive Order directs agencies to act, even in advance of rulemaking, to seek the views of those who are likely to be affected. This group explicitly includes “those who are likely to benefit from and those who are potentially subject to such rulemaking.” Among other things, this emphasis on early involvement is an effort to acquire relevant information and to avoid unintended harmful consequences.

Second, the new Executive Order specifically 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 requires greater coordination. The order also explicitly connects the goal of harmonization with the interest in innovation, directing agencies to achieve regulatory goals in ways that promote that interest.

Third, the Executive Order firmly stresses the importance of quantification. It directs agencies “to use the best available techniques to quantify anticipated present and future benefits as accurately as possible” – and to proceed only on the basis of a reasonable determination that the benefits justify the costs.

Fourth, the Executive Order directs agencies to identify and to consider flexible approaches that reduce burdens and maintain freedom of choice for the public. Such approaches may include, for example, public warnings, appropriate default rules, or provision of information “in a form that is clear and intelligible.”

The reference to “appropriate default rules” signals the possibility that important social goals can be obtained through simplification – as, for example, in the form of automatic enrollment. We know that automatic enrollment plans in the domain of savings can greatly increase participation. With respect to savings, the Administration has taken numerous steps to promote such plans.

We also know that simplification of existing requirements can often promote compliance and participation and that complexity can have serious unintended consequences. In many domains – including education, where we have radically simplified the Free Application for Federal Student Aid form – we have taken strong steps toward greater simplicity. Indeed, we have recently issued a call to all agencies to reduce reporting burdens on small business and to eliminate unjustified complexity.
Reflecting a clear commitment to these principles, the lookback plans are now being offered to the public for comments and ideas. Agencies will be carefully assessing the available evidence and those comments before they finalize their plans.

Finally, this pragmatic, cost-effective, evidence-based approach to regulation is what has informed our practices for the past two and a half years.

We have launched initiatives that have helped drive highway deaths to their lowest level in sixty years; promoted airline safety while protecting passengers from tarmac delays, overbooking, and hidden charges, in part through disclosure policies; sharply reduced the risk of salmonella from eggs; dramatically increased the fuel economy of the fleet, thus promoting energy independence while saving consumers a lot of money; and protected against air pollution that kills thousands of people each year.

At the same time, and there is absolutely no contradiction here, we are eliminating unnecessary regulatory burdens and tens of millions of hours in annual red-tape.

The focus of the plans released today is on continuing scrutiny of costly requirements, with close reference to evidence and data – and to the experience and wisdom of the American people.

To protect taxpayer dollars, and our future safety and prosperity, we will change the regulatory culture of Washington by constantly exploring what is working and what isn’t. Agencies are creating teams to continue to review their rules – to make sure that this is not just a one-time event.

The announcement of today’s plans is unquestionably a defining moment. But it is just the start. And I hope that this process might inaugurate a broader, less polarized, more evidence-based conversation about how we might promote economic growth and job creation while protecting the health and safety of the American people. I know that you will be participating in that conversation.

When Alexander Hamilton inaugurated another and even larger conversation, with a series of papers that came to be known as The Federalist, he wrote, The Federalist No. 1:

“It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.”

Of course the current process does not of course have anything like the momentousness of the decisions made by We the People in the late 1700s.

But the process is also in its way an effort not to depend on accident and force, but to promote good government by reason and choice. In that sense, it might be seen as an effort, in one domain, to honor our founders’ extraordinary achievement.
Thank you.
TRANSCRIPT OF QUESTION AND ANSWER SESSION

Christopher DeMuth: Where can we read these reports? Where are they?

Cass Sunstein: They are all available on a White House website. There’s a website dedicated to this purpose, and you can download them all with a click.

Question: My understanding is that these look-backs were also supposed to identify rules that may be needed to be strengthened. Do you know any of the plans identified any such rules, and if not, does that suggest that the look-backs didn’t have adequate balance?

Cass Sunstein: Thank you for that, it’s a great question. If the items on the plans are good, then all of them are strengthening rules. So strengthening can come from modifying, from scaling back, and from expanding. The word in the executive order is “expand.” And it is true, no question, that there are parts of the plans that expand. If you look at the EPA plan in particular, you will see significant streamlining in cost reduction and things that also qualify as expansion. There’s no doubt from the President’s own pronouncements that the fundamental emphasis of this particular process is on cost reduction and burden reduction. But it is also the case that expansion is specifically called out and greater effectiveness, and you’ll see a lot of that on the plans.

Question: I was pleased to hear you mention the importance of a data-driven, empirically based process in both rulemaking and look-back studies, and you mentioned specifically pilot test experiments. You didn’t mention surveys. I was hoping you would. One of the shortcomings we see a lot in looking at proposed rules and looking at look-back studies that agencies do is the lack of empirical data. They say, “Well we don’t have data to estimate this cost or that benefit.” And they increasingly seem to ignore the opportunity that OMB provides them to do specialized surveys. What are you doing to explicitly facilitate and encourage, and in fact require agencies, to back up their economic analyses and their look-back studies with data that they go out and purposely get?

Cass Sunstein: That’s a great question. Can you tell me what you mean about surveys?

Question: Collecting data on what the types of firms are, for example, that are affected by a particular rule, the breakdown of small versus large businesses, and so forth.

Cass Sunstein: My office also oversees—in fact it was created by—the Paperwork Production Act, and so the word ”surveys” can have multiple meanings. If you ask people, “What do you think of . . .” So that’s not what you mean. This is a key question, and we’ve been working in the last couple years very closely with agencies, basically all the major rule-making agencies, to try to ensure that there are surveys, in your sense, producing data before they go forward with rules. And there are some cases where data is hard to come by, and that makes a regulatory conclusion difficult. What I would like to emphasize here is that if there are cases where there is an available survey that would importantly inform cost-benefit analysis that we haven’t done and we ought to do, the President’s asked for a
60-day period for public comment on rules, and that is a completely appropriate comment, that you haven’t acquired data that would help you nail an issue on which you are speculating. One thing that seems small, but, in my little neck of the woods we take it very seriously, is there is a Circular A-4 from OMB which is about 50 pages of very dense prose. It has the ingredients of regulatory impact analysis. It’s not the most transparent document, in the sense that it’s a technical document. For the public, or for even agency personnel, it’s a challenge. What we did a few months ago was to condense this into a page and a half checklist, and the checklist basically has all of the ingredients of a regulatory impact analysis, which include quantification and monetization of benefits. That’s one item on the short checklist. Another is quantification and monetization of costs, that’s another item. A third is best available evidence. And those all go exactly to your point.

**Question:** I’m sure that I don’t have to tell you that agency guidance documents, while they don’t have the theoretical course of law, often have the same practical effect as rulemaking. So is it your position or the administration’s idea that guidance documents should also be subjected to the same kind of rigorous analysis? And if not, do you worry about those that may be invested in the older culture of regulation might try to use guidance documents to avoid this kind of analysis?

**Cass Sunstein:** That is a really important point, so thank you for that. And for a number of years, I guess the word is taught, I at least participated in classrooms involving administrative law, and I hope I taught administrative law. There is jurisprudence on the distinction between guidance documents and rules, and it goes directly to your point that sometimes guidance documents are effectively rules, either because they are legally binding or because they are practically binding, and of course I have a problem with that. What we do—I’ll tell you the following and we are eager for ideas about how to do better—is under a memorandum issued by then OMB director Peter Orzag in March 2009, guidance documents are subject to our OIRA process as our rules. We work closely with agencies to make sure guidance documents, when they are guidance documents, are really, legitimately guidance documents. There was recently a draft guidance document, by the way, that went out for public comment, involving clean water and the definition of navigable waters in the United States. It’s extremely clear that it’s a guidance document. It’s not legally binding. With respect to your question about economic analysis and such, guidance documents under the prevailing executive orders aren’t subject to the rigorous, analytical requirements that rules are, and there is good reason for that. Rules are legally binding. To be subject to the rigorous analytical requirements, they must, under the executive order, cost $100 million dollars a year or more. If a guidance document is costing $100 million dollars or more a year, then it ain’t a guidance document. There’s a legitimate place for guidance documents. We work very closely with agencies to make sure they are properly guidance documents. If they’re costing money, then they might not be guidance documents at all. If they are projected to create practices that have costs, it’s kind of case-by-case about whether there is analysis. We’re much interested in that.

**Question:** You mentioned that, and I would agree with you, that highway deaths are down, as are major crimes, but I’m not sure I understand what it is the government has had to do with that. I was wondering if you could point to some specifics. States are raising speed
limits as we speak. The other thing is I’m wondering if the Consumer Financial Protection Bureau, which starts up in July, is going to be subject to your oversight or OMB oversight.

Cass Sunstein: With respect to highway deaths, we’ve had—and this is something, as I say, a number of administrations can share credit for—practices, including rules, that make cars safer. And some of these rules have been issued in the last couple of years involving ejection from cars or fortifying cars so that if they get hit people aren’t going to die. And we have several rules like that that are projected to save hundreds of lives every year. So those are part of a pattern of rules that are saving lives. What I’d like to emphasize, by way of praise for the current Secretary of Transportation, is that he has made an unprecedented commitment to reducing deaths as a result of distracted driving. The number of deaths from distracted driving is not trivial. And what he’s done has not been solely rulemaking, saying that “You can’t text while driving, while you’re transporting hazardous materials,” and there are levers the federal government has over texting while driving in domains where federal authority exists, but he’s also helped get into the culture a sense that distracted driving is a problem. In fact, the word “distracted driving” is now a familiar word. It wasn’t a couple of years ago. So you can look at the panoply of rules, and also initiatives that are shorter rules, which can be a quite good thing because it’s less aggressive, that have contributed to a reduction in highway deaths. I want to celebrate not only good work done at the Department of Transportation but also good work done at the state and local levels with enforcement education and very small interventions like those strips where they want you to slow down, you feel a little bump. There is no question that there are a number of contributors to the reduction in highway deaths, but there is also no question that federal efforts to promote safety are among those contributors. That’s something to celebrate. Here’s a little note for you: as late as the early 1980s, the rate of seatbelt buckling in the United States was around 11, 12, 13 percent. It’s now 70 percent or higher, it might be in the 80s. And that saves lives, and that’s the result of efforts by many people, including, by the way, the current Secretary of Transportation. So this is a big success story here.

In terms of the independent agencies, President Reagan made a decision when he inaugurated the regulatory review process. I actually was there at the time. I was a toddler, but I was allowed in the building. And Chris, who was also a toddler—we were in preschool together—was there at the time. President Reagan made a decision that the independent agencies, in a traditional autonomy, would be respected, and they wouldn’t be subject to the review process. And that decision by President Reagan has been robust to differences over time. That’s our practice as well. The only thing I would add is that we did very clearly say in our guidance that we hoped the independent agencies would voluntarily comply with the directives in the executive order, and we do so hope.

Question: My question is this: I don’t think anyone could dispute the idea that we ought to be looking for regulations that achieve certain objectives at the lowest possible cost to business, but I wonder if in this process that we’re undergoing, if we’re not missing a cost even to the process of look-back. Many of these agencies are strapped for resources, and we know from a GAO study that was just completed that one of the causes of regulations not coming out that are needed is simply a lack of resources in these agencies. So, how is this
whole process of look-back, for example, postponing the day in which we have infant formula quality standards, which were first mentioned in the 1986, or the egg standard you mentioned, which was raised by President Clinton and took ten years to come out? The list goes on.

Cass Sunstein: That’s a great question, so thank you for that. I’d note that the egg standard, we did in a hurry, so it came out pretty quick. I have a kind of friendly amendment to the idea of cost to business. I think that is maybe a decades old way of thinking about it. If businesses bear cost, the incidence of the cost isn’t some abstract person who wears a very expensive suit. Maybe that person will bear some of the cost, but consumers, workers, et cetera. The incidence is the key issue. It is true that the look-back plans take some work to produce. We have at OIRA, last time I checked, upwards of 120 rules under review. I have not noticed any slowdown in regulatory activity on the rulemaking side as a result of the look-back. In fact, when I go through the kind of folder in my mind of the people I talked to at the agencies, I’m talking to them simultaneously about their look-back plans and their rulemaking initiatives. This will not compromise, even a little bit, efforts to provide critical safeguards for public health and safety. We are committed to those, and they’re coming forward.

Christopher DeMuth: Cass, thank you for a splendid presentation, and congratulations.

Cass Sunstein: Thank you.