

THE BENEFITS OF A DEREGULATORY AGENDA: EXAMPLES FROM PIONEERING GOVERNMENTS

JOINT HEARING BEFORE THE SUBCOMMITTEE ON INTERGOVERNMENTAL AFFAIRS AND THE SUBCOMMITTEE ON HEALTHCARE, BENEFITS, AND ADMINISTRATIVE RULES OF THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTEENTH CONGRESS SECOND SESSION

SEPTEMBER 27, 2018

Serial No. 115-108

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: <http://www.govinfo.gov>
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U.S. GOVERNMENT PUBLISHING OFFICE

32-690 PDF

WASHINGTON : 2018

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THE BENEFITS OF A DEREGULATORY AGENDA: EXAMPLES FROM PIONEERING GOVERNMENTS

Thursday, September 27, 2018

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERGOVERNMENTAL AFFAIRS, JOINT
WITH THE SUBCOMMITTEE ON HEALTHCARE, BENEFITS,
AND ADMINISTRATIVE RULES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittees met, pursuant to call, at 2:14 p.m., in Room 2247, Rayburn House Office Building, Hon. Gary Palmer [chairman of the Subcommittee on Intergovernmental Affairs] presiding.

Present from Subcommittee on Intergovernmental Affairs: Representatives Palmer, Grothman, Massie, Walker, Raskin, and DeSaulnier.

Present from Subcommittee on Healthcare, Benefits, and Administrative Rules: Representatives Jordan, Walker, Grothman, and Krishnamoorthi.

Mr. PALMER. The Subcommittee on Intergovernmental Affairs and the Subcommittee on Healthcare, Benefits, Administrative Rules will come to order. Without objection, the presiding member is authorized to declare a recess at any time.

Over the past several decades, regulations imposed by the Federal Government have had an adverse impact on economic activity as these Federal regulations have accumulated over time. Regulatory accumulation is a drag on our economy, and it stifles innovation. According to a recent study by the Mercatus Center, the Federal regulations had held at the 1980 levels, our economy would be nearly 25 percent larger than it was as of 2012.

We have seen the results of this regulatory accumulation and the stunning decline of the number of new businesses. A Gallup organization report from back in 2015 showed that American business deaths outnumbered business births. I have a copy of that entitled, "American Entrepreneurship: Dead or Alive?" that I would like to enter into the public record and will do so without objection.

Mr. PALMER. In my experience in Alabama, people don't want to start a business when the overwhelming uncertainty of the regulatory process threatens to come down on them. Why bother when the risks are compounded by a myriad of complex and sometimes contradictory regulations?

Recognizing the potential benefits of a deregulatory agenda, President Trump called for a one-in, two-out ratio for new regu-

latory actions. The shift in regulatory policy is expected to save business owners and entrepreneurs both time and money. While the United States is still in the early stages of implementing regulatory reform, we know from some of our foreign friends and allies that the push for deregulation has resulted in tremendous outcomes.

In British Columbia, the Canadian Government experimented with regulatory reform beginning 2001. To date, the British Columbia Government has repealed more than 40 percent of their regulatory requirements. As a result, British Columbia experienced a period of per-capita GDP growth and business development that outpaced the national average in Canada.

Another success story took place in Australia where the national government initiated a standard business reporting or SBR system that made it easier for businesses to report one time rather than typical duplicative reporting mechanisms. Savings from the SBR from 2015 to 2016 were roughly \$1.1 billion in Australian dollars or \$750–800 million U.S.

However, we don't have to look so far for success stories. Our 50 States have shown what may work for the rest of the country. Kentucky Governor Matt Bevin instituted a red-tape reduction initiative. State officials are undertaking review of the entire pool of State regulations to identify those that are unnecessary, duplicative, and ineffective.

In a short period of time, Kentucky has repealed 453 regulations, which is nearly 10 percent of Kentucky's total pool of regulations. Kentucky officials report these efforts have led to the creation of roughly 40,000 jobs and \$9.2 billion in direct investment in the State.

We are fortunate to have with us at today's hearing witnesses who can speak to each of these examples. I am eager to learn from them, what worked, what didn't, and what could be done differently.

I would like to make clear that this hearing is not about slashing regulations, as some may suggest. Our focus today is on streamlining reporting to make compliance burdens easier. Our focus is on helping small businesses survive and thrive in the 21st century. We are talking about eliminating obsolete, duplicative, and contradictory regulations that don't make sense.

I will close with something President Obama said about regulations back in 2011 in the Wall Street Journal. He wrote that, "Sometimes those rules have gotten out of balance, placing unreasonable burdens on business, burdens that have stifled innovation and have had a chilling effect on growth and jobs." I bring this up because to me this is something that we should all agree is important to our nation.

For a nation as economically powerful as ours to lag behind our friends and allies when it comes to innovation and new business creation is not only unfortunate, it is a missed opportunity. I ask my Democratic friends to join us in making this a priority.

I thank the witnesses again and look forward to hearing from each of you about regulatory reform success stories. I will also ask to have this Gallup report included in the record, as I mentioned earlier. And without objection, so ordered.

Mr. PALMER. I now recognize the ranking member of the Healthcare, Benefits, Administrative Rules Subcommittee, Mr. Krishnamoorthi, for his opening statement.

Mr. KRISHNAMOORTHY. Thank you, Mr. Chairman, for holding today's hearing, and thank you to all the witnesses for coming. And thank you for the audience for participating.

I agree with all my colleagues that we need smart regulations, and we need to make sure that we keep the interests of taxpayers first. On the other hand, I am incredibly concerned about recent actions by the Trump administration, which I believe are shortsighted and will harm millions of Americans and increase costs to the Federal Government.

In his second week in office, President Trump issued an executive order mandating that two regulations be eliminated for every new regulation proposed. This so-called two-for-one policy ignores numerous and well-documented economic benefits derived from many of the regulations that are proposed to be eliminated.

President Trump's attempts to rollback student loan protections, offshore drilling protections, environmentally sound fuel-efficiency standards, and consumer financial protections should alarm all people, Democrats and Republicans alike. If your workplace is OSHA-certified, if your food is approved by the FDA, or your local water supply certified as clean by the EPA, this executive order places your well-being potentially at risk.

Just this week the House overwhelmingly passed an FAA reauthorization that contains several pro-consumer protections. It prohibits airlines from forcibly removing passengers, requires a minimum leg room for each seat, prohibits the use of cell phones in flight, and requires all airports to provide nursing rooms for mothers and babies. I don't think that we should be forcing unelected bureaucrats to repeal any of these requirements without adequate thought and investigation.

The President's order imposes a needlessly arbitrary standard on public agencies that have a charge to serve the public. This particular rule ties the hands of public employees and prevents them from using the best-available evidence about which regulations should stay and which should be revised or repealed. The Office of Management and Budget annually issues a congressionally mandated report that identifies the cost of government rules on the private sector and the estimated financial benefits produced for the American people. Every Federal rule has a cost and a benefit, and this report is key to making sure that the benefits always outweigh the costs. We owe this to every taxpayer.

Every year, this OMB-mandated report shows objectively that the economic benefits of Federal rules far outweigh the costs. Just last year, the totals were \$4.9 billion in costs on businesses and \$27.3 billion in benefits to the American public. This is a report that was commissioned by the Trump Office of Management and Budget.

Let me be clear. The benefits always have to outweigh the rules. There is no question about it. We have to make regulations smart, and we owe this to the taxpayers. However, in a case like this where the Trump administration's own OMB issues a report showing that the benefits of these rules and regulations outweigh the

costs by a measure of five to one, does it really make sense to have a two-for-one policy in terms of eliminating one for every two that are proposed?

I thank our witnesses for sharing their testimony today, and I look forward to continuing this important discussion. Thank you.

Mr. PALMER. I now recognize the chairman of the—excuse me. That is not predicative.

Mr. RASKIN. Let's not get ahead of ourselves.

Mr. KRISHNAMOORTHY. Let's not get ahead of ourselves.

Mr. PALMER. Yes. Yes. I now recognize the ranking member of the Intergovernmental Affairs Subcommittee, Mr. Raskin, for his opening statement.

Mr. RASKIN. Chairman Palmer, thank you so much. So a couple months ago we convened a hearing to discuss the theory that government-issued regulations are failing the American people, and at that hearing I tried to defend our regulatory process from the notice and comment period through regulatory enforcement as simply a set of rules. And I reminded my colleagues that rules are ubiquitous. There are sets of rules we follow every day, and all of us have no doubt followed dozens of rules even just since waking up this morning.

Our job in Congress here is to pass laws that reflect the values of the people and implement our priorities, and agencies help us do that by adopting rules to execute and enforce those laws.

At that same hearing we took a tour of some of the most celebrated rules ever promulgated by agencies, for example, the seat-belt rule, the overtime rule, and so on. Like these, most Federal rules are commonsense protections of vital freedoms that we cherish, freedom from air pollution and water pollution, freedom from dangerous consumer appliances, freedom from workplace discrimination and predatory business practices and monopolies. Rules have made our people freer and our country safer, healthier, cleaner, and more secure. And my opinion has not changed on that.

As we know, regulation is just a fancy name for a rule, and we all live according to them. Every household, every family, every sport, every school, every road and highway, every institution, every economy, every corporation, Congress and indeed this committee, we all have rules that we adhere to and live by.

In one of his first official acts, President Trump issued an executive order directly targeting rules. His so-called two-for-one policy arbitrarily called for the repeal of two existing rules for every new one promulgated with zero attention to the economic and social benefits that those rules might be continuing to our country. That's like saying every time we pass a law, we should have to repeal two laws. But I remember a moving passage from Judge Learned Hand who said "Thou shalt not ration justice." President Trump and my colleagues in the House have made destroying government rules one of their top priorities. They have made deregulation a political fetish. And they are indeed rationing justice.

Behind all the deregulatory rhetoric, the majority is on a crusade to scrap rules that limit the power of big corporations or rein in Wall Street and the financial industry. They are targeting regulations under the Clean Water Act and the Clean Air Act, rules that restrict the freedom of polluters. I can't count the times we voted

in the House on creating new rules that interfere with women's rights to make their own healthcare decisions and decisions about birth control and reproduction.

We have stalled the Farm Bill over new regulations that they want to seek. They want to impose work requirement rules on SNAP recipients, and they are inventing new rules to stop legal immigrants who want to become citizens from accessing certain government programs. This kind of bureaucratic extremism proliferates more regulation and more red tape not in the pursuit of justice or freedom but control and power.

Since our last hearing in July, the administration has only added to its hit list of targeted Obama-era rules. The administration sold out working-class families who strive to attain a college education by allowing Secretary DeVos to rescind the borrower defense rule. For-profit colleges will now be able to engage in predatory behavior again with relative impunity. Just last month, the White House announced the repeal of fuel-efficiency standards. This troubling rule reversal will allow almost a billion metric tons of carbon dioxide into the atmosphere in the next 20 years and increase consumer spending on gasoline by \$20 billion by 2025.

Rules generally make our country safer, healthier, and more just. Unfortunately, the administration is using rules to rollback progress, pollute our environment, and imperil our freedoms. The costs of an America without any rules are not hard to imagine and they are impossible to accept. We cannot risk American lives and our nation's environment because the President wants to reward big campaign donors and corporations while using the regulatory boogieman to try to destroy democratically chosen regulations. Let's think pragmatically and not ideologically. Let's remember that Federal regulations are just our rules, and when it comes to building a strong democracy, laissez isn't fair.

I appreciate all of our witnesses for their time and testimony today, and I look forward to an important discussion about the continued utility of the rules we all rely on.

I yield back, Mr. Chairman.

Mr. PALMER. I thank the gentleman.

The chair now recognizes the chairman of the Healthcare, Benefits, and Administrative Rules Subcommittee, Mr. Jordan, for his opening statement.

Mr. JORDAN. Thank you, Mr. Chairman. And I disagree with so much of what my good friend and colleague from Maryland just—and I do mean good friend. We got a bill we are working on together that would—actually, he mentioned rationed justice. I do think we need to ration regulations, but we got a bill we are working on that focuses on the Constitution and the rights of those in the press not to have the government force them or compel them to give their confidential source away. So I appreciate the gentleman, the professor from Maryland, but I just disagree.

I think you go ask almost any American, do you think 72,000 rules that the EPA has on the oil and gas industry in our State is probably too many? It probably is. So that is all we are focusing on here is that idea that maybe we got a little too much government. Let's get back to commonsense regulation. Some of the things I think that the administration has done on the regulatory

front have been helpful and have led to this amazing economic growth we have witnessed over the last 20 months, 4.2 percent annualized growth rate right now, which is tremendous, and far better than where we were just a few years ago. So that is what is at stake here.

And I appreciate the chairman having this hearing. And because I walked in 22 minutes late for committee, I am going to yield back the remainder of my time so we can get right to our good set of witnesses here. Thank you, Mr. Chairman.

Mr. PALMER. I thank the gentleman.

I am now pleased to introduce our witnesses: Ms. Laura Jones, executive vice president and chief strategic officer of the Canadian Federation of Independent Business. Thank you for being here; Mr. Matt Vickers, product sales engineer, New Markets at Xero. Thank you; Mr. Scott Brinkman, secretary of the executive cabinet for the Commonwealth of Kentucky, appreciate your presence; and Mr. Amit Narang, regulatory policy advocate at Public Citizen. Thank you, sir, for being here.

Pursuant to committee rules, all witnesses will be sworn in before they testify. Please stand and raise your right hand.

[Witnesses sworn.]

Mr. PALMER. The witnesses may be seated. The record will reflect that all witnesses answered in the affirmative.

In order to allow time for discussion, please limit your testimony to five minutes. Your entire written statement will be made part of the record.

As a reminder, the clerk in front of you shows—the clock in front of you—and we can get a clerk if we need to. As a reminder, the clock in front of you shows the remaining time during your opening statement. The light will turn yellow when you have 30 seconds left—and unlike a traffic light, that does mean speed up—and red when your time is up. So please remember to press the button in front of your microphone before speaking.

I am pleased now to recognize Ms. Jones for her testimony.

WITNESS STATEMENTS

STATEMENT OF LAURA JONES

Ms. JONES. Chairman Jordan, Chairman Palmer, Ranking Members Raskin and Krishnamoorthi, I want to thank you for inviting me to testify. I bring very warm wishes from north of the border.

And by way of background, my interest in regulatory reform comes from my roots as an economic researcher and also from my current position at the Canadian Federation of Independent Business, representing and advocating for small-business owners who, like their American counterparts, are deeply affected by regulation.

I'm here today to talk about the British Columbia model of regulatory reform, and I think the overarching lesson from this model is that a substantial reduction in government rules is possible without negatively affecting the human health, safety, and environmental outcomes that we all care about. And I think this is important because it speaks directly to the challenge that modern governments in developed countries face, which is how do you best

control red tape while protecting the important justified regulations?

And we know this is important because excess regulation or red tape leads to a host of bad consequences from reduced incomes to increased income inequality and poverty. Governments of all stripes tend to agree that reducing red tape is a worthy objective, but accomplishing this objective can prove elusive.

This is where the British Columbia model stands out. It stands out as a model that has delivered results. The main result is a 49-percent reduction in regulatory requirements since 2001. And the three keys to accomplishing this result: political leadership, regulator involvement, and simplicity.

By way of context, British Columbia is Canada's westernmost province, and its reform started 17 years ago in 2001. At the time, economic growth and employment in the province lagged the rest of the country and had done so for most of the previous decade. The '90s is often referred to as the dismal decade in British Columbia. Excessive regulation was—examples of excessive regulation were just not that hard to come by, so, for example, forest companies were told what size nails they had to use to build small bridges over streams. Restaurants were told what size television sets they could have in their establishments.

So in 2001, a new government was elected, and they had made the campaign promise that they would improve the economy, including reducing regulation by one-third in three years. The government accomplished this goal and more, and there were three key elements to the reforms. First, a minister was appointed whose only job it was to quarterback and champion these reforms and make sure they were put in place. Second, a measure that was simple enough that it could be applied broadly across government rules was used. And finally, two regulatory requirements had to be eliminated for every new one introduced. And this policy was later changed to one in, one out.

In terms of the reforms outcomes, by 2004 the one-third target had been exceeded. And once the target was met, this new one-for-one policy was put in place. But here's the interesting thing: The regulatory restrictions level, requirements level did not stabilize at the one-third reduction but continued to go down to the 49-percent reduction that I said. Regulators continued to identify rules to cut faster than they were adding rules, although there was no longer any pressure to cut. I think that's an interesting outcome.

In terms of outcomes, of course, it's also important that this wasn't just about cutting rules for the sake of cutting rules. It was also about maintaining high outcomes. And there were high outcomes of health, safety, and environment that were maintained. Another outcome, the province went from being one of the worst-performing economies in the country to being one of the best.

So in conclusion, I want to repeat the three lessons that I think come from this model. Political leadership matters. The involvement of regulators matters. Regulators are not the enemy in this story. They were an important part of the solution. And the final reason for success is simplicity. Somewhat ironically, I think it's tempting to overcomplicate regulatory reform, and the thing that really distinguishes B.C.'s regulatory reforms is its reliance on a

clear simple measure that could be applied broadly and communicated easily. And so there's a place for more complicated measures, but there's also a place for simpler ones.

And with that, I'll conclude my comments and thank you very much. I look forward to questions.

[Prepared statement of Ms. Jones follows:]



TESTIMONY

LESSONS FROM THE BRITISH COLUMBIA MODEL OF REGULATORY REFORM

Laura Jones

*Visiting Research Fellow, Mercatus Center at George Mason University
Executive Vice-President and Chief Strategic Officer, Canadian Federation of Independent Business*

House Committee on Oversight and Government Reform, Subcommittee on Healthcare, Benefits, and Administrative Rules, and Subcommittee on Intergovernmental Affairs
The Benefits of a Deregulatory Agenda: Examples from Pioneering Governments

September 27, 2018

Good afternoon, Chairman Jordan, Chairman Palmer, and ranking members Demings and Krishnamoorthi. I want to thank you for inviting me to testify. I bring warm wishes from north of the border.

By way of background, my interest in regulatory reform comes from my roots as an economic researcher and from my current job advocating for Canadian small business owners who, like their American counterparts, are deeply affected by regulation. Specifically, my research focuses on the importance of and the challenges associated with implementing successful reforms that make a positive difference to citizens. This, as we all appreciate, is not easy.

Governments of all stripes tend to agree that reducing red tape is a worthy objective but accomplishing this objective can prove elusive. The challenge modern governments in developed countries face is controlling the growth of red tape in the messy real world where measures are imperfect and the line between justified regulation and red tape can be difficult to establish.

- The stakes are high as excessive regulation leads to a host of bad consequences from reduced incomes to increased income inequality and poverty.
- An overarching and important lesson from the British Columbia (BC) model is that a substantial reduction in rules is possible without negatively affecting health, safety, and environmental outcomes.
- The BC model stands out in this regard not as a perfect model but as one that has moved the province forward using a simple approach that engages regulators themselves to be a substantial part of the solution.

THE BC MODEL IN BRIEF

Context

British Columbia is Canada's westernmost province with a population of 4.6 million people (roughly the same population as Louisiana) and a GDP of approximately C\$220 billion (approximately US\$170 billion). Economic growth and employment in British Columbia lagged the rest of the country in the

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1990s. At that time, excessive regulation and high taxes were widely cited as major concerns by those in the business community.

Examples of excessive regulating were not hard to find. Forest companies were told what size nails to use when building bridges over streams. Restaurants were told what size televisions they could have. Golf courses had to have a certain number of par-four holes, and the maximum patron capacity for ski hill lounges was based on the number of vertical feet it took to get to the top of the mountain.¹

In 2001, a new government was elected after campaigning on promises to improve the economy. One of these commitments was to reduce the regulatory burden by one-third in three years.

Implementing the Reforms and Measuring Progress

The new premier appointed a minister of deregulation whose only responsibility was regulatory reform. The minister's first challenge was to develop a new regulatory policy and to figure out what measure the government would use to determine the success of its commitment to reduce the regulatory burden by one-third in three years.

The minister considered several options before deciding the province would create its own "regulatory requirement" measure. A "regulatory requirement" is defined in BC's Regulatory Reform Policy as "an action or step that must be taken, or piece of information that must be provided in accordance with government legislation, regulation, policy or forms, in order to access services, carry out business or pursue legislated privileges."² For example, writing your name on a form or being required to have a safety committee meeting would each count as one regulatory requirement.³ Like all measures, the regulatory requirements measure has its limitations but it proved to be a good choice in that it was simple enough to apply broadly and capture requirements in regulations large and small.

To develop a baseline count of regulatory requirements against which to measure the one-third reduction, each ministry conducted its own count of all regulatory requirements contained in the statutes, regulations, policies, and forms that the ministry oversaw. This was done with the help of some interns in a matter of months. Today more modern approaches using text analysis to count regulatory restrictions could make this far easier.⁴

The regulatory requirement measure, like all measures, has its benefits and flaws. Its main benefit is its simplicity, which means it can be broadly applied, easily understood, and replicated. The main flaw is that it is one step removed from what we really want to know about regulation, which is its effect on well-being and the quality of life of citizens.⁵

The first government-wide count revealed 330,812 regulatory requirements.⁶

¹ Government of British Columbia, Ministry of Small Business and Economic Development, *Ministry of Small Business and Economic Development Deregulation Report*, October 2004.

² This measure was unique to BC at the time but is similar to the measure that the Mercatus Center uses for RegData, a dynamic dataset that quantifies the number of individual restrictions in an administrative code and determines both which industries are targeted by those regulatory restrictions and which agencies issued the restrictions. One important difference between the RegData measurement and the BC measurement is that BC's measurement includes requirements found in policies and legislation as well as in regulation while RegData looks at regulatory restrictions found in regulation.

³ Note that if you are required to fill out your name on a page four times a year, that still only counts as one requirement in British Columbia. Manitoba has recently taken this further and includes frequency. If you have to fill out your name of a form four times a year, that would count as four regulatory requirements in Manitoba.

⁴ For example, RegData uses this approach. Interestingly, Manitoba recently finished a robust manual counting exercise that proved helpful for regulators to understand where obligations are coming from.

⁵ This is challenging too for more complicated approaches to measurement that try to estimate benefits and costs.

⁶ This count was initially 382,129 requirements but subsequently revised to 330,812 to eliminate some double counting. One of the other measures that the minister explored was simply counting the number of regulations rather than counting the

Of course having a measure is not enough; it also must be monitored. In BC's case, the measure was monitored closely. During the initial years of the reform, the BC government publicly issued quarterly reports showing how many regulatory requirements each ministry had reduced (see table 1 for an example). The reports were discussed regularly at cabinet meetings and created a strong culture of accountability across government. A regulatory checklist was also put in place.

TABLE 1. BRITISH COLUMBIA QUARTERLY PROGRESS REPORT, MAY 2004: REDUCTIONS BY MINISTRY AND MAJOR CROWNS/AGENCIES

| ministry | regulatory requirements as of June 5, 2001 (restated) | net change as of March 31, 2004 | results to March 31, 2004 |
|--|--|------------------------------------|------------------------------|
| Advanced Education | 1,861 | -269 | 1,592 |
| Agriculture, Food Fisheries | 4,538 | -1,120 | 3,418 |
| Attorney General | 4,056 | 129 | 4,185 |
| Children and Family Development | 16,963 | -8,722 | 8,241 |
| Community, Aboriginal and Women's Services | 71,238 | -33,932 | 37,306 |
| Education | 27,597 | -5,669 | 21,928 |
| Energy and Mines | 7,431 | -1,740 | 5,691 |
| BC Hydro | 1,081 | -35 | 1,046 |
| BC Utilities Commission | 1,099 | -284 | 815 |
| BC Transmission Corporation | 749 | 0 | 858 |
| Oil and Gas Commission | 7,338 | -2,670 | 4,668 |
| Finance | 41,382 | -13,188 | 28,194 |
| Forests | 17,088 | -8,552 | 8,536 |
| Health Services | 10,758 | -544 | 10,214 |
| Human Resources | 2,005 | -601 | 1,404 |
| Management Services | 618 | 36 | 654 |
| BC Public Service Agency | 5,760 | -1,891 | 3,869 |
| Provincial Revenue | 13,478 | -2,857 | 10,621 |
| Public Safety and Solicitor General | 26,979 | -3,835 | 23,144 |
| BC Lottery | 3,272 | 0 | 3,272 |
| Insurance Corporation of BC | 10,555 | -3,221 | 7,334 |
| Liquor Distribution Branch | 5,022 | -2,713 | 2,309 |
| Skills Development and Labour | 8,688 | -3,413 | 5,275 |
| Workers Compensation Board | 35,308 | -10,606 | 24,702 |
| Small Business and Economic Development | 2,329 | -724 | 1,605 |
| BC Securities Commission | 21,316 | 1,201 | 22,517 |

restrictions contained in regulations as well as legislation, policies, and forms. It's interesting to note that just counting regulations would have meant a baseline of 2,200 rather than roughly 330,000.

TABLE 1 (CONTINUED)

| | | | |
|--|---------|---------|---------|
| Sustainable Resource Management | 8,766 | -1,938 | 6,828 |
| Environmental Assessment Office | 607 | -345 | 262 |
| Transportation | 1,531 | -292 | 1,239 |
| BC Ferries | 82 | -17 | 65 |
| BC Rail | 32 | 0 | 32 |
| BC Transit | 220 | 0 | 220 |
| Motor Carrier Commission | 824 | -215 | 609 |
| Water, Land and Air Protection | 21,541 | -5,413 | 16,128 |
| Premier's Office—Intergovernmental Relations | 27 | 0 | 27 |
| Ministries total | 289,866 | -92,644 | 197,222 |
| Crowns and agencies total | 92,273 | -20,796 | 71,477 |
| GOVERNMENT TOTAL | 382,139 | 113,440 | 268,699 |

Note: The count includes rules associated with tax administration.

Source: Government of British Columbia, Ministry of Small Business and Economic Development.

When the BC government first introduced the Reform Policy in 2001, two regulatory requirements had to be eliminated for every one introduced. At one point regulators were going beyond this requirement and identifying five requirements to be cut for every new one introduced. Today the policy requires one-for-one.⁷ Requiring regulators to complete the checklist and eliminate two regulatory requirements for every new one introduced represented a dramatic change in thinking about regulation in BC: it put the onus on the government to make the case that additional regulation was necessary, to ensure adequate consultation, to keep compliance flexible, and to reduce the total amount of regulation. It essentially changed the role of the regulator from that of regulation “maker” to that of regulation “manager.” And it did this right across government.⁸

By 2004 the three-year reduction target had been slightly exceeded with requirements being 37 percent lower than in 2001. Once the target was met, a new one-for-one policy replaced the two-for-one policy. Interestingly, the number of regulatory requirements did not stabilize at the 37 percent reduction but continued to move downwards, and as noted above currently stands at 49 percent below 2001 levels. This suggests a fairly deep culture change in government as regulators continued to identify requirements to cut faster than they were adding them, although they no longer had to do this. This is at odds with the trend that many jurisdictions face where despite efforts to put in controls, restrictions continue to proliferate.⁹

REFORM OUTCOMES

As noted above the reforms have led to a close to 50 percent reduction in regulatory requirements. Importantly, at the same time the province has maintained high levels of environmental quality and safety.¹⁰

⁷ This policy expires in 2019 and it is unclear whether it will be extended. One-for-one has been in place in BC since 2004, when the initial one-third reduction target was met.

⁸ There was initially some resistance to the culture change. For a more detailed explanation see Laura Jones, *Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?* (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, November 2015).

⁹ This has been the case in the United States.

¹⁰ The BC government set up an independent progress board in 2001 to benchmark key social, economic, and environmental indicators. The province maintained excellent performance in health and environmental indicators relative to other provinces.

The impact of the reforms on the economy cannot be precisely quantified and it is important to note BC's regulatory reforms happened at the same time that there was an across-the-board personal income tax rate cut of 25 percent. We do know that before the reforms, business owners big and small were frequently pointing to excessive government regulation as a deterrent to growth and innovation in the province. We also know the province lagged the rest of the country on important indicators such as economic growth, per capita disposable income, and business creation, with the 1990s often referred to as the "dismal decade." The province went from being one of the worst-performing economies in the country pre-reform to one of the best post-reform.¹¹

Economic growth in BC was 1.9 percentage points below the Canadian average between 1994 and 2001 but 1.1 percentage points above the Canadian average between 2002 and 2006.¹² BC's real GDP growth was lower than Canada's as a whole in six of the nine years between 1992 and 2000, but grew faster than Canada's every year between 2002 and 2008.¹³ While there were other factors at play in BC's economic turnaround, red tape reduction played a critical role in this positive outcome.

Another indicator of success, albeit an indirect one, is the number of jurisdictions who have looked to incorporate elements of the BC model in their own reforms. Canada recently became the first country in the world to make a version of one-for-one the law when its federal government promulgated the Red Tape Reduction Act.¹⁴ However, it is worth noting that Canada's federal government uses a cost measure that is applied much more narrowly than British Columbia's. Other examples of jurisdictions inspired by British Columbia include Manitoba and Kentucky. Executive Order 13771 is another example of two-for-one. It too uses a complex measure that has narrowed its scope to a relatively small number of economically significant rules, which constitute about 8 percent or fewer of all federal regulations.¹⁵

LESSONS FROM BRITISH COLUMBIA

The British Columbia model, while not perfect, has some important lessons in it.

Lesson #1: Political Leadership Matters

Successful reform needs political champions. In the BC context this came in the form of a premier who made reform a priority across government and a minister responsible who made sure that the reforms were well executed. In other political models, such as the United States, this would look somewhat different, but reforms need strong champions and those who can "quarterback" the reforms across government.

Lesson #2: Simplicity Matters (Particularly with Respect to Measurement)

One thing that distinguishes BC's regulation reforms is the reliance on a clear, simple metric that could be applied broadly and communicated easily. There are certainly alternative approaches to the regulatory requirement metric used in BC that would be just as good, if not better. However, too often, regulatory measures become so complex that they are too expensive for governments to use broadly or communicate simply. More complex measures such as benefit-cost analysis have an important place in regulatory

maintaining its number-one place from 2001 to 2011 when the last report was issued. For the 2011 report, see *11th Annual Benchmark Report* (Vancouver: British Columbia Progress Board, 2011).

¹¹ James Broughel, "Can the United States Replicate the British Columbia Growth Model?," Mercatus Center at George Mason University, May 25, 2017.

¹² *8th Annual Benchmark Report* (Vancouver: British Columbia Progress Board, December, 2008), 19.

¹³ Jock Finlayson, *BC Economy: A Retrospective* (Vancouver: British Columbia Business Council, April 2009).

¹⁴ When the government introduces a regulation that imposes a new administrative burden on business, at least one regulation must be eliminated. The legislation also requires that the new regulation add no cost burden to business, which may mean that more than one regulation must be eliminated.

¹⁵ James Broughel and Laura Jones, "Effective Regulatory Reform: What the United States Can Learn from British Columbia" (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, 2018).

development and evaluation, particularly for the largest rules. But a broad measure also has an important place as it helps capture the blizzard of small things that can add up to a large regulatory burden from the point of view of those tasked with compliance. In the US context, creating an inventory with a simpler, broader measure may be a good complement to the existing two-for-one policy.

BC's simple measure allowed for simple reporting. It was clear to other ministers as well as to the general public where regulatory requirements had been cut or added and by how much. This created very powerful incentives not to add rules unnecessarily and to reduce where possible. This seems replicable in the United States.

Lesson #3: Regulators Are an Important Part of the Solution

In BC regulation makers became regulation managers. This was accomplished in a number of ways including the two-for-one constraint and the one-third reduction target. The biggest indication of a culture change happened after the one-third target was met and regulators continued to identify more regulatory requirements to reduce than add, although they were no longer required to do this under the new one-for-one policy.

CONCLUSION

British Columbia's model of regulatory reform stands out for its longevity, effectiveness, and simplicity. In the 17 years that it has been in place, the province has cut its regulatory requirements virtually in half (a 49 percent reduction since 2001). This is a remarkable achievement in two dimensions. First, cutting the number of government rules in half while maintaining good health, safety, and environmental outcomes is impressive. Second, the reforms represent an important step forward in regulatory accountability. Most jurisdictions in North America have no aggregate regulatory measure that is regularly tracked, although this is beginning to change.¹⁶

The initial reduction target of one-third in three years was selected on the basis of a political "gut feeling" rather than research. Interestingly, more than that was possible. It also lines up with the "gut feeling" of small business owners in both the United States and Canada who, when surveyed on the subject, say they believe about one-third of government rules can be eliminated without negatively affecting the reasons for having the rules in the first place.¹⁷

ATTACHMENT

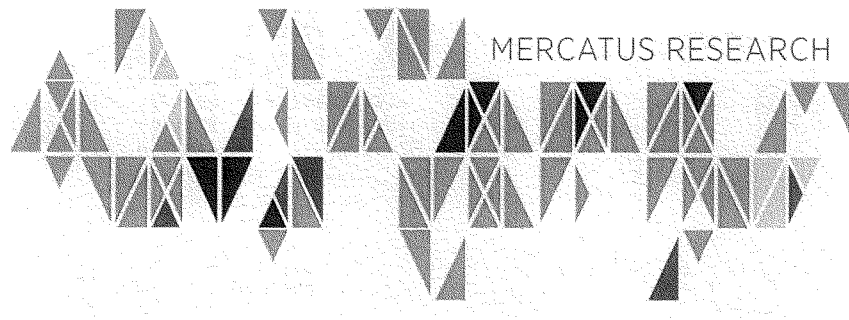
Laura Jones, "Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?" (Mercatus Research)

¹⁶ In the Canadian context, the province of Manitoba has recently done a very comprehensive inventory of its rules that it is tracking. Outside of government, the Mercatus RegData project has regulatory restriction counts for the federal government and many states.

¹⁷ Laura Jones, Nina Gormanns, and Queenie Wong, *Canada's Red Tape Report with U.S. Comparisons* (Toronto: Canadian Federation of Independent Business and KPMG Enterprise, 2013).

Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?

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Laura Jones. "Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?" Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, November 2015.

ABSTRACT

Canada recently passed a federal law requiring that one regulation be removed for every new regulation introduced. This change has deep roots in a broader set of reforms from the province of British Columbia, designed to control red tape while preserving justified regulation. British Columbia's model of regulatory reform is notable for its success and longevity. Canada's experience with regulatory reform offers some very practical lessons for US governments. The essential ingredients of effective reform include political leadership from the top, public reporting of clear metrics, and constraints on regulators. It is also very helpful to have a credible group outside government pushing for less red tape. In Canada's case, that group was and continues to be small business.

JEL code: L51

Keywords: red tape, regulation, regulatory reform, government of British Columbia, one-for-one rule, small business

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Release: November 2015

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Canada recently became the first country in the world to legislate a cap on regulation. The Red Tape Reduction Act, which became law on April 23, 2015, requires the federal government to eliminate at least one regulation for every new one introduced.¹ Remarkably, the legislation received near-unanimous support across the political spectrum: 245 votes in favor of the bill and 1 opposed. This policy development has not gone unnoticed outside Canada's borders.²

Canada's federal government has captured headlines, but its approach was borrowed from the province of British Columbia (BC) where controlling red tape has been a priority for more than a decade.³ BC's regulatory reform dates back to 2001 when a newly elected government put in place policies to make good on its ambitious election promise to reduce the regulatory burden by one-third in three years. The results have been impressive. The government has reduced regulatory requirements by 43 percent relative to when the initiative started.⁴ During this time period, the province went from being one of the poorest-performing economies in the country to being among the best. While there were other factors at play in the BC's economic turnaround, members of the business community widely credit red tape reduction with playing a critical role.

1. When the government introduces a regulation that imposes a new administrative burden on business, at least one regulation must be eliminated. The legislation also requires that the new regulation add no cost burden to business, which may mean that more than one regulation must be eliminated.

2. For example, when the Canadian legislation came into force, it was a featured story on National Public Radio (NPR). Uri Berliner, "Canada Cuts Down on Red Tape: Could It Work in the U.S.?" NPR, May 26, 2015, <http://www.npr.org/2015/05/26/409671996/canada-cuts-down-on-red-tape-could-it-work-in-the-u-s>.

3. Other Canadian provinces also have borrowed elements of the BC model, including Newfoundland, Nova Scotia, Quebec, Ontario, and Saskatchewan. However, BC's reforms are the most enduring and transparent.

4. Government of British Columbia, "Count Overview Report," Regulatory Reform BC, http://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/regulatory-reform/pdfs/march_2015_rr_overview_by_ministry_web.pdf.

The British Columbia model, while certainly not perfect, is among the most promising examples of regulatory reform in North America. It offers valuable lessons for US governments interested in tackling the important challenge of keeping regulations reasonable. The basics of the BC model are not complicated: political leadership, measurement, and a hard cap on regulatory activity.

This paper describes British Columbia's reforms, evaluates their effectiveness, and offers practical "lessons learned" to governments interested in the elusive goal of regulatory reform capable of making a lasting difference. It also offers some important lessons for business groups and think tanks outside government that are pushing to reduce red tape. These groups can make all the difference in framing the issue in such a way that it can gain wide support from policymakers. A brief discussion of the challenges of accurately defining and quantifying regulation and red tape add context to understanding the BC model, and more broadly, some of the challenges associated with effective exercises in cutting red tape.

DEFINING RED TAPE

Red tape refers to rules, policies, and poor government services that do little or nothing to serve the public interest while creating financial cost or frustration to producers and consumers alike. Red tape may include poorly designed laws, regulations, and policies; outdated rules that may have been justified at one time but are no longer; and rules intentionally designed to burden some businesses while favoring others. Red tape, as the term is used in this paper, stands in contrast to government laws, regulations, rules, and policies that support an efficient and effective marketplace and provide citizens and businesses with the protections they need. For the sake of keeping a clear distinction between the two, the latter will be referred to as "justified regulation" in this paper.⁵ The "broad regulatory burden" is composed of both justified regulation and red tape.

Some rules fall into the justified regulation category because they deliver a lot of benefits relative to their costs. Others, such as an eliminated BC regulation prescribing what size televisions BC restaurateurs could have in their

5. As an added complexity to creating clear definitions, governments use the term "regulation" in a narrow sense to refer to rules created directly by statutes while individuals affected by government rules tend to use the term more broadly to refer to rules in legislation, statutes, and policies, as well as time wasted trying to understand the rules. The broader definition is used in this paper except where noted.

establishments, have little or no value and entail significant compliance costs, so they fall into the category of red tape. However, the difference between justified regulation and red tape is not always straightforward in the messy real world where costs and benefits are not always easily quantified and one person's red tape is another person's justified regulation.

Despite measurement challenges, available evidence suggests that the broad regulatory burden is growing in both Canada and the United States. Given that red tape delivers very little benefit relative to its costs, it is reasonable to want to keep this piece of the broad regulatory burden to a minimum. This is easy to say but hard to do for a number of reasons. Part of the challenge can be attributed to the loose language that is often used about regulatory reform, especially the imprecise use of the terms *regulation* and *red tape*. People sometimes confuse cutting red tape, which most support at least in theory, with eliminating justified regulation, which most do not support in theory or practice.

In Canada, the language about government reform has evolved to put a heavy emphasis on the distinction between red tape and necessary or justified regulation, as exemplified in the title of the recently passed Red Tape Reduction Act. The Canadian Federation of Independent Business (CFIB), a not-for-profit small business advocacy group with 109,000 small business members, strongly promotes this distinction in its work with governments.⁶ For example, in 2010 it created an annual Red Tape Awareness Week to highlight the costs of red tape and to tell the stories of business owners affected by it. Politicians at both the provincial and federal levels of government make announcements about cutting red tape (as opposed to announcements about regulatory reform) during the week. For example, during the 2011 Red Tape Awareness Week, former prime minister Stephen Harper announced the creation of a Red Tape Reduction Commission (which ultimately led to a number of reforms, including the one-in, one-out legislation explained above). The BC government used the 2015 Red Tape Awareness Week to announce that it was extending its policy of eliminating one regulatory requirement for every new one introduced to 2019 (it had been set to expire in 2015).⁷

6. CFIB as an organization and the author of this paper as its executive vice-president spend a considerable amount of time advocating on the issue of red tape with governments at all levels in Canada. Red tape reduction is the second highest priority of CFIB's small business membership, behind easing the total tax burden.

7. British Columbia News, "B.C. Top of the Class in Canada for Cutting Red Tape," press release, BC Gov News, January 20, 2015, <https://news.gov.bc.ca/stories/bc-top-of-the-class-for-cutting-red-tape>.

“Reducing regulatory excess without measurement is like trying to lose weight without ever stepping on a scale—possible but not probable.”

QUANTIFYING REGULATION AND RED TAPE

Governments have three main ways of influencing behavior: taxing, spending, and regulating. All have benefits and costs. With taxation and government spending, however, the costs and benefits are more obvious. It is clear how much money the government collects in revenues and there is a high degree of transparency with respect to how the money is spent, although it can be tougher to evaluate outcomes of spending and the externality costs and benefits to third parties. The costs of the broad regulatory burden and its two components, justified regulation and red tape, are considerably less clear. Much of the costs fall on those who must comply with the rules, and these costs are never quantified by governments, making them essentially a hidden tax. Regulatory benefits too can be challenging to quantify.

The challenges of measuring regulatory costs and benefits are not trivial because they make it difficult to assess how much the broad regulatory burden is costing, whether the costs are increasing, and how much of the broad regulatory burden is red tape. In spite of ongoing concern from business communities in both the United States and Canada that regulatory costs are too high and growing, governments tend to be reluctant to take the first necessary step to assess the burden: that is, to measure it. Reducing regulatory excess without measurement is like trying to lose weight without ever stepping on a scale—possible but not probable.⁸ A distinguishing feature of the BC model, discussed in the next section, is the government’s willingness to create and track its own measure of the broad regulatory burden.

While governments have been generally reluctant to quantify the regulatory burden, others have stepped up to

8. In my own experience advocating for red tape reduction in Canada, government officials often argue that they should not try to measure the reductions because the measurements are too crude, and the officials do not believe that existing quantitative results can be connected to making a qualitative difference. Another argument is that it would be too expensive to calculate the costs of regulation.

the challenge, including researchers working for the Canadian CFIB, as well as the Mercatus Center at George Mason University, the Competitive Enterprise Institute, and the Small Business Administration's Office of Advocacy in the United States. Existing measures, albeit limited and imperfect, bring some valuable transparency to our understanding of the broad regulatory burden. Clyde Wayne Crews, author of numerous studies on the broad burden of regulation, explains,

Precise regulatory costs can never be fully known because, unlike taxes, they are unbudgeted and often indirect. But scattered government and private data exist about scores of regulations and about the agencies that issue them, as well as data about estimates of regulatory costs and benefits. Compiling some of that information can make the regulatory state somewhat more comprehensible.⁹

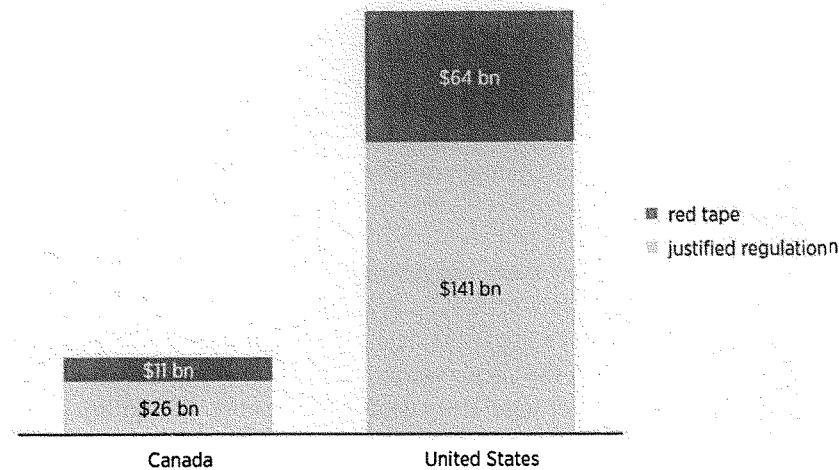
Using survey results from both Canada and the United States, CFIB estimates that broad regulatory costs for US businesses are around C\$205 billion while Canadian businesses, far fewer in number, pay C\$37 billion a year.¹⁰ What fraction of these broad costs might constitute red tape? When US small businesses were asked how much of the burden of regulation could be reduced without sacrificing the public interest for these regulations, the average response was a 31 percent reduction (or C\$64 billion a year) with Canadian respondents sharing a similar view on the fraction of the broad regulatory burden that is red tape (see figure 1).¹¹ The survey results are consistent with the

9. Clyde Wayne Crews Jr., *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State*, 2014 ed. (Washington, DC: Competitive Enterprise Institute, 2014), 2.

10. Marvin Cruz et al., *Canada's Red Tape Report 2015* (Toronto: Canadian Federation of Independent Business, 2015). C\$205 billion is roughly equivalent to US\$165 billion, and C\$37 billion is equivalent to about US\$30 billion. To estimate the cost of regulation in each country, CFIB conducted a survey of CFIB members in Canada and Ipsos Reid conducted a survey for CFIB in the United States. After eliminating outliers, the Canadian survey had 8,562 responses and the US survey had 1,535 responses. Respondents were asked questions about the time spent complying with existing rules and regulations and about money spent on accountants and lawyers for the sole purpose of complying with government rules. Respondents were also asked about fees spent on equipment. The responses were then divided into five categories according to size (fewer than 5 employees, 5–19 employees, 20–49 employees, 50–99 employees, and 100 or more employees). To determine the total cost for all firms, the national cost per employee for each firm size was multiplied by the total number of employed individuals corresponding to that firm size in each country. For a detailed discussion of the methodology, see appendix B of the report.

11. Laura Jones, Nina Gormanns, and Queenie Wong, *Canada's Red Tape Report with U.S. Comparisons* (Toronto: Canadian Federation of Independent Business and KPMG Enterprise, 2013).

FIGURE 1. COST OF THE BROAD REGULATORY BURDEN IN CANADA AND THE UNITED STATES



Note: Amounts are in 2014 Canadian dollars.

Source: Laura Jones, Nina Gormanns, and Queenie Wong, *Canada's Red Tape Report with U.S. Comparisons* (Toronto: Canadian Federation of Independent Business and KPMG Enterprise, 2013).

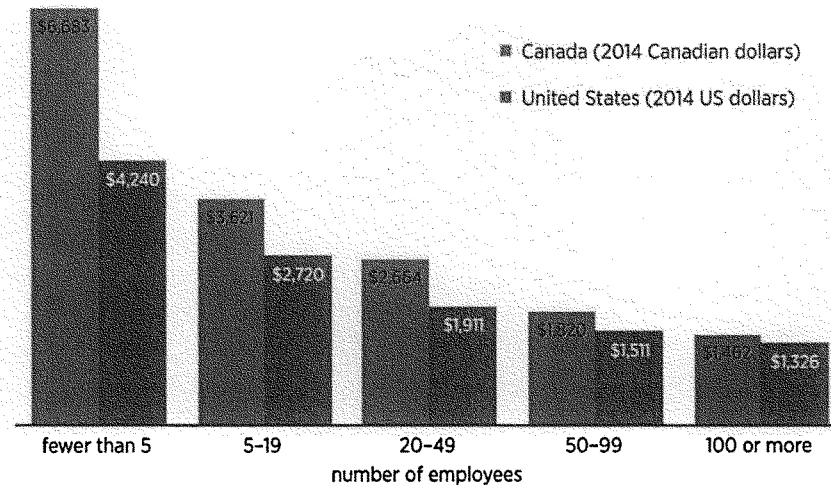
findings of other studies, showing that the smallest businesses in both countries pay considerably higher per-employee regulatory costs than larger businesses do (see figure 2).

The same CFIB survey found that more than half of US small businesses (57 percent) agree that excessive regulations (or red tape) significantly reduce business productivity while 65 percent of Canadian businesses agree with the same statement. A significant portion of respondents in both countries indicate excessive regulations discourage businesses growth. Beyond the economic costs, small business owners find regulatory compliance very stressful, with 78 percent of Canadian respondents agreeing that excessive regulations add significant stress to their lives and 65 percent of US respondents agreeing (see figure 3).¹²

In both Canada and the United States, far more businesses believe the burden of regulation is growing or staying the same than those that believe it is decreasing (see figure 4). Figure 5 shows how business owners say they would use savings if the cost of regulation was reduced. Investing in equipment and expanding the business is the most commonly cited use for the savings, another indication that reduced regulatory costs could enhance productivity.

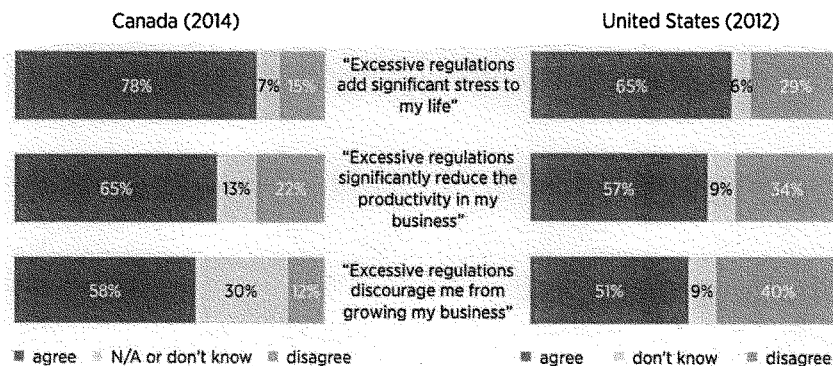
12. Marvin Cruz et al., *Canada's Red Tape Report 2015*.

FIGURE 2. ANNUAL REGULATION COST PER EMPLOYEE, BY SIZE OF FIRM



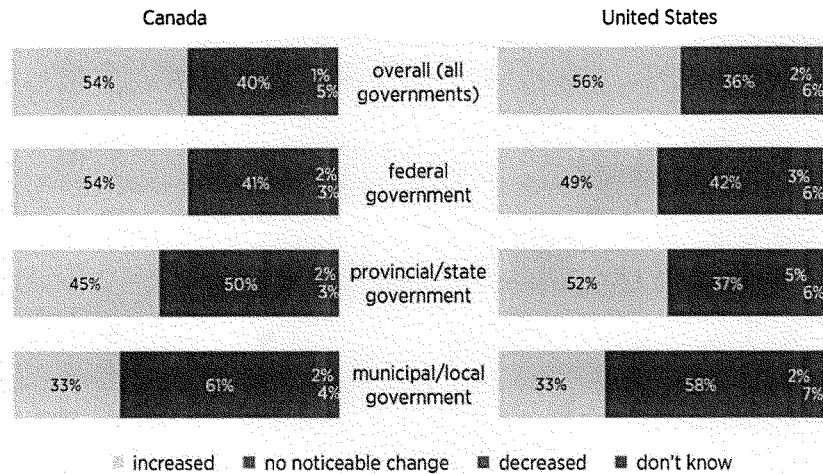
Sources: *Canada's Red Tape Report 2015*; calculations based on CFIB's Survey on Regulation and Paper Burden (conducted in 2012, N = 8,562), data from Statistics Canada; Survey on Regulation and Paper Burden in the United States (conducted by Ipsos Reid in 2012, N = 1,535), data from the United States Bureau of Labor Statistics.

FIGURE 3. THE EFFECT OF EXCESSIVE REGULATIONS ON PRODUCTIVITY AND GROWTH



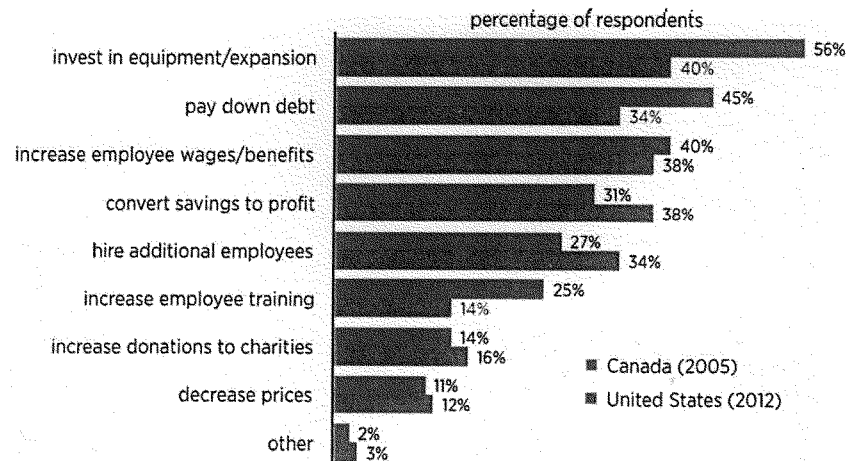
Sources: *Canada's Red Tape Report 2015*; calculations based on CFIB's Survey on Regulation and Paper Burden (conducted in 2012, N = 8,562), data from Statistics Canada; Survey on Regulation and Paper Burden in the United States (conducted by Ipsos Reid in 2012, N = 1,535), data from the United States Bureau of Labor Statistics.

FIGURE 4. CHANGE IN THE BROAD REGULATORY BURDEN OVER THE PAST THREE YEARS, BY LEVEL OF GOVERNMENT



Sources: *Canada's Red Tape Report 2015*: calculations based on CFIB's Survey on Regulation and Paper Burden (conducted in 2012, N = 8,562), data from Statistics Canada: Survey on Regulation and Paper Burden in the United States (conducted by Ipsos Reid in 2012, N = 1,535), data from the United States Bureau of Labor Statistics.

FIGURE 5. HOW BUSINESS OWNERS WOULD USE SAVINGS IF THE COST OF REGULATIONS WERE REDUCED



Source: *Canada's Red Tape Report 2013*: CFIB's Survey on Regulation and Paper Burden (conducted in 2005, N = 7,391) and Survey on Regulation and Paper Burden in the United States (conducted by Ipsos Reid in 2012, N = 1,535).

A very different way to quantify the broad regulatory burden is to track it by volume—by counting the number of regulations, the number of requirements associated with regulations, or the number of pages of regulations. An example of the approach of counting the number of regulatory restrictions is the Mercatus Center’s database called RegData, which counts the number of regulatory restrictions in the *Code of Federal Regulations* (using a count of restrictive terms such as “shall not” and “must”).¹³ According to its data, as of 2012, there were 1,040,940 restrictions in the *Code of Federal Regulations*, an increase of 28 percent since 1997. RegData also quantifies how many additional restrictions are in place as a result of new laws such as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which has added over 27,000 new federal restrictions since 2010, compared to all other laws passed by the Obama administration (roughly 25,500).¹⁴ RegData considers only federal regulations (as mentioned previously, government rules also can exist in legislation and other government policies), and it does not attempt to differentiate red tape from justified regulation. The Mercatus database has the advantage of being more objective than survey-based approaches, as it does not rely on perceptions and estimates of time and money spent on regulation.

Using yet another approach with a more complex methodology, Nicole Crain and Mark Crain wrote a report for the Small Business Administration’s Office of Advocacy, in which they estimate that the cost of federal regulations in the United States in 2008 was \$1.75 trillion (14 percent of US GDP), up from \$1.1 trillion in 2005 and \$843 billion in 2001.¹⁵ The cost of US regulation in this study is significantly larger than the estimate from the survey-based approach of the CFIB, underscoring how challenging it is to estimate regulatory costs.

The US Congress requires the Office of Management and Budget to submit a report each year estimating the annual benefits and costs of federal regulation to the extent feasible. The report for 2014 estimates the benefits of federal regulation to be between \$217 billion and \$863 billion from October 1, 2003, to September 30, 2013, while the costs over the same period are estimated at somewhere between \$57 billion and \$84 billion (in 2001 dollars).¹⁶ However,

13. Omar Al-Ubaydli and Patrick A. McLaughlin, “RegData: A Numerical Database on Industry-Specific Regulations for All US Industries and Federal Regulations, 1997–2012” (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, November 2014).

14. Ibid.

15. Nicole V. Crain and W. Mark Crain, *The Impact of Regulatory Costs on Small Firms* (Washington: US Small Business Administration, Office of Advocacy, September 2010).

16. Office of Management and Budget, Office of Information and Regulatory Affairs, *2014 Report to Congress on the Benefits and Costs of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, 2015.

the estimates only cover a small fraction of the total rules. Richard Williams and James Broughel find that for fiscal years 2003–2012, OMB reported both cost and benefit numbers for only 0.3 percent of the regulations.¹⁷ Both the wide range of the estimates and the limited scope of what they cover once again underscore the challenge of quantifying the costs and benefits of regulation.

The standard cost model, initially used in the Netherlands, is a way of measuring part of the overall regulatory burden.¹⁸ Popular with European governments, this model estimates the amount businesses spend administering regulations, but it makes no attempt to divide the regulations into those that are legitimate and those that would be considered red tape. Denmark, the Netherlands, and Norway have used the model to track progress toward their respective reduction targets of 25 percent. Although some European countries have embraced the model as a credible way to measure, it does have drawbacks. The methodology is complex (the user's guide is 63 pages long) and it is much more difficult to implement than the BC measure discussed in the next section.

This brief discussion of some of the available measures of the regulatory burden leads to two important conclusions. First, measuring the broad regulatory burden, and determining what portion of that burden may constitute red tape, is a challenging and imperfect undertaking. However, measurement is also an essential part of effective red tape reduction. One of the difficulties that governments interested in effective red tape reduction face is finding a clear, credible measure they can be comfortable using in spite of its inevitable imperfections. Second, available evidence suggests that the broad regulatory burden, including red tape, is large and growing, and that reducing red tape is a worthy policy objective. Both of these observations make the BC model of red tape reduction discussed below very relevant.

BRITISH COLUMBIA'S EXPERIENCE WITH RED TAPE REDUCTION

British Columbia is Canada's westernmost province, with a population of 4.6 million people (roughly the same population as Louisiana) and a GDP of

17. Richard Williams and James Broughel, "Government Report on Benefits and Costs of Federal Regulations Fails to Capture Full Impact of Rules," Mercatus Center at George Mason University, December 2, 2013, <http://mercatus.org/publication/government-report-benefits-and-costs-federal-regulations-fails-capture-full-impact-rules>.

18. SCM Network, *International Standard Cost Model Manual: Measuring and Reducing Administrative Burdens for Business*, accessed November 9, 2015, www.oecd.org/gov/regulatory-policy/34227698.pdf.

approximately C\$220 billion.¹⁹ BC's small open economy is reasonably well diversified, with important sectors including forestry, mining, oil and gas, agriculture, tourism, financial services, real estate, technology, and film products.

The context for BC's experience with regulatory reform was set in the 1990s, a time widely known as BC's "dismal decade,"²⁰ when economic growth and employment lagged behind the rest of the country.²¹ The New Democratic Party government came to power in 1991 and raised taxes and increased regulation. The attitude of the government toward the economy in the 1990s is captured well by the comments of former premier Glen Clark, who was in power for most of that period. Shortly after leaving office, he told a reporter, "We were an old-fashioned activist government, with no more money. So you're naturally driven to look at ways you can be an activist without costing anything. And that leads to regulation."²²

It is no surprise that, during this period, too much regulation or red tape was often cited as a significant contributor to BC's economic underperformance, and the province had a reputation within Canada for regulatory excess. Forest companies were told what size nails to use when building bridges over streams. Restaurants were told what size televisions they could have. Golf clubs had to have a certain number of par-four holes, and the maximum patron capacity for ski hill lounges was based on the number of vertical feet it took to get to the top of the mountain.²³

The forest industry, one of the province's main economic drivers, was burdened with a prescriptive Forest

"Golf clubs had to have a certain number of par-four holes, and the maximum patron capacity for ski hill lounges was based on the number of vertical feet it took to get to the top of the mountain."

19. Using the exchange rate of 0.7982 (Feb 10, 2015, Bank of Canada) C\$220 billion is equivalent to US\$176 billion.

20. The "dismal decade" language captured the public imagination and is still used today. Media referred to it during the 2013 election.

21. Satinder Chera and Fazil Mihar, *The Government of British Columbia, 1991-1998: An Assessment of Performance and a Blueprint for Economic Recovery* (Vancouver: The Fraser Institute, 1998).

22. David Beers, "Glen Clark Unplugged," *Vancouver Sun*, August 3, 2001.

23. Government of British Columbia, Ministry of Small Business and Economic Development, *Ministry of Small Business and Economic Development Deregulation Report*, October 2004.

Practices Code that was widely cited as a deterrent to investment. According to one estimate, forestry regulations had added over \$1 billion to the industry's costs with no public benefit.²⁴ The mining industry, another economic driver, was also suffering. In a 1998 survey of mining companies, British Columbia's overall investment policies scored last out of 31 jurisdictions on an investment attractiveness index, receiving a score of 5 points out of a possible 100. BC was the worst jurisdiction on several red tape indicators contributing to the index, such as "uncertainty concerning the administration, interpretation and enforcement of existing regulations" (76 percent indicated this was a strong deterrent to investment), and "regulatory duplication and inconsistencies" (62 percent indicated this was a strong deterrent to investment).²⁵

Elections in British Columbia tend to be quite close, but in 2001 concern over the economy—including uncompetitive tax and regulatory policies, deficits, and costs of infrastructure projects—contributed to a landslide victory of the Liberal Party (a center-right coalition) over the incumbent New Democratic Party (a left-of-center party) that had been in power since 1991; 77 of 79 seats in the election were won by Liberal candidates.

THE EARLY YEARS OF RED TAPE REDUCTION IN BRITISH COLUMBIA: 2001–2005

During the 2001 election campaign, the soon-to-be-elected Liberal government made the commitment to reduce the regulatory burden by one-third in three years. Once elected, Premier Gordon Campbell wasted no time in taking steps to accomplish his government's goal. In his first cabinet, the premier appointed Kevin Falcon to the newly created position of minister of state for deregulation. Falcon's only responsibility was regulatory reform, and he reported regularly at cabinet meetings.

The choice of the strong word "deregulation" reflected the context in which the reforms were undertaken—a province emerging from a "dismal decade" needed big policy changes. The minister of deregulation's first challenge was to develop a new regulatory policy and to figure out what measure the government would use to determine the success of its commitment to

24. Cornelis G. Van Kooten and Sen Wang, "Estimating Economic Costs of Nature Protection: British Columbia's Forest Regulations," *Canadian Public Policy* (May 1998).

25. Fraser Institute, *The Fraser Institute Annual Survey of Mining Companies Operating in North America, 1998/1999* (Vancouver: Fraser Institute, 1998). Recent editions of the survey show a greatly improved performance on all the indicators cited here, with an overall policy ranking of 75 out of 100.

reduce the regulatory burden by one-third. Over time, the language changed from “deregulation” to “regulatory reform” and “red tape reduction.”

Falcon rejected several crude regulation measures used by think tanks and academics in the past.²⁶ For example, he decided not to count pages of regulations or to simply count regulations, as each individual regulation can have literally thousands of requirements associated with it. To understand the difference between counting “regulations” and counting “regulatory requirements,” consider that the Workers Compensation Act (legislation governing workplace safety) has nine regulations associated with it, but these nine regulations contain 35,308 regulatory requirements.

The minister chose to use regulatory requirements as his counting tool. The regulatory requirement measure was unique to BC at the time. It is similar to the measure that the Mercatus Center is now using for its RegData project. One important difference between the RegData measure and the BC measure is that BC’s measure included requirements found in policies and legislation as well as in regulations, so it is quite comprehensive. A “regulatory requirement” is defined in BC’s Regulatory Reform Policy (see attachment) as “an action or step that must be taken, or piece of information that must be provided in accordance with government legislation, regulation, policy or forms, in order to access services, carry out business or pursue legislated privileges.” For example, writing your name on a form or being required to have a safety committee meeting would each count as one regulatory requirement. To develop a baseline count of regulatory requirements, each ministry conducted its own count of all the regulatory requirements contained in the statutes, regulations, and policies that ministry oversaw. A central regulatory requirement database, administered by the newly created Deregulation Office, was established to track progress against the baseline and issue regular reports. The first government-wide count revealed 382,139 regulatory requirements (the regulation count, which was not used, would have been a much less compelling 2,200).²⁷

The regulatory requirement measure has several advantages, including its simplicity and granularity relative to the much cruder regulation measure.

26. Personal conversation with Kevin Falcon in June 2001. Falcon was looking for a way to benchmark the commitment to reduce regulation by one-third and we discussed some of the challenges with respect to counting regulations or pages. He understood the limitations of these cruder measures and developed his own “regulatory requirement” measure.

27. The initial counts were done over the course of several months with the help of interns. This initial count was subsequently revised to 360,295 to eliminate some double counting. The budget for the Regulatory Reform Office is not broken out separately but based on personal correspondence with the Regulatory Reform Office in 2009 is estimated to be around C\$460,000 a year. The Regulatory Reform Office staffing and budget has experienced only minor fluctuations since 2001.

However, like other measures, it has its flaws. For example, a regulatory requirement could be something that only a few people have to do once a year or it could be something that many people have to do multiple times a year. The impact of these requirements is vastly different, yet each would count as one regulatory requirement.²⁸ The measure could evolve to include frequency of reporting.

Setting a clear target for regulatory reduction and establishing a clear and compelling measure for evaluating success are two things that differentiate BC's regulatory reform initiative from other initiatives. In contrast, many regulatory reform initiatives focus on identifying specific irritants. These initiatives have a track record of failing to make much difference because, as the specific irritants are dealt with, others proliferate—the equivalent of pulling a few weeds in an overgrown garden.

One example of this is the prior BC government's announcement in the 1998 budget that cutting red tape would be a priority. The government set up the Small Business Task Force, which focused on specific initiatives such as streamlining filing and registration requirements and simplifying approval processes. These are worthy objectives, but it is hard to see how they contribute to an overall reduction without the discipline of an aggregate measure in place.²⁹

Another common approach to regulatory reform is to institute some form of regulatory impact analysis (RIA) that is essentially an internal checklist for regulators who must go through the exercise of evaluating the costs and benefits of new regulations. The United States and Canada, as well as many other developed countries, use a form of RIA process at the federal and state or provincial level (not all US states have a RIA process). While RIAs may improve the regulatory process, they have not proved an effective approach for reducing red tape for at least three reasons: they are not subject to much public scrutiny, they do not cover a broad enough scope, and they set no overall limit on the total volume of regulatory activity.³⁰

Of course having a measure is not enough, it also must be monitored. In BC's case, the measure was monitored closely. During the initial years of the reform, the BC government publicly issued quarterly reports showing how many regulatory requirements each ministry had reduced. Table 1 is a quarterly report

28. The standard cost model discussed in the previous section would capture more of this but only for requirements found in regulations (not legislation or policies). The standard cost model is also much more complicated and would have taken far longer to implement.

29. Ministry of Finance and Corporate Relations, "Budget '98 Cuts Taxes and Red Tape to Stimulate B.C. Economy, Encourage Investment and Create Jobs," press release, March 30, 1998.

30. For a good discussion of the limitations of RIAs, see Jerry Ellig and Richard Williams, "Reforming Regulatory Analysis, Review, and Oversight: A Guide for the Perplexed" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, August 2014).

TABLE 1. BRITISH COLUMBIA QUARTERLY PROGRESS REPORT, MAY 2004: REDUCTIONS BY MINISTRY AND MAJOR CROWNS/AGENCIES

| Ministry | Regulatory Requirements as of June 5, 2001 (restated) | Net change as of March 31, 2004 | Results to March 31, 2004 |
|--|---|---------------------------------|---------------------------|
| Advanced Education | 1,861 | -269 | 1,592 |
| Agriculture, Food Fisheries | 4,538 | -1,120 | 3,418 |
| Attorney General | 4,056 | 129 | 4,185 |
| Children and Family Development | 16,963 | -8,722 | 8,241 |
| Community, Aboriginal and Women's Services | 71,238 | -33,932 | 37,306 |
| Education | 27,597 | -5,669 | 21,928 |
| Energy and Mines | 7,431 | -1,740 | 5,691 |
| BC Hydro | 1,081 | -35 | 1,046 |
| BC Utilities Commission | 1,099 | -284 | 815 |
| BC Transmission Corporation | 749 | 0 | 858 |
| Oil and Gas Commission | 7,338 | -2,670 | 4,668 |
| Finance | 41,382 | -13,188 | 28,194 |
| Forests | 17,088 | -8,552 | 8,536 |
| Health Services | 10,758 | -544 | 10,214 |
| Human Resources | 2,005 | -601 | 1,404 |
| Management Services | 618 | 36 | 654 |
| BC Public Service Agency | 5,760 | -1,891 | 3,869 |
| Provincial Revenue | 13,478 | -2,857 | 10,621 |
| Public Safety and Solicitor General | 26,979 | -3,835 | 23,144 |
| BC Lottery | 3,272 | 0 | 3,272 |
| Insurance Corporation of BC | 10,555 | -3,221 | 7,334 |
| Liquor Distribution Branch | 5,022 | -2,713 | 2,309 |
| Skills Development and Labour | 8,688 | -3,413 | 5,275 |
| Workers Compensation Board | 35,308 | -10,606 | 24,702 |
| Small Business and Economic Development | 2,329 | -724 | 1,605 |
| BC Securities Commission | 21,316 | 1,201 | 22,517 |
| Sustainable Resource Management | 8,766 | -1,938 | 6,828 |
| Environmental Assessment Office | 607 | -345 | 262 |
| Transportation | 1,531 | -292 | 1,239 |
| BC Ferries | 82 | -17 | 65 |
| BC Rail | 32 | 0 | 32 |
| BC Transit | 220 | 0 | 220 |
| Motor Carrier Commission | 824 | -215 | 609 |
| Water, Land and Air Protection | 21,541 | -5,413 | 16,128 |
| Premier's Office—Intergovernmental Relations | 27 | 0 | 27 |
| Ministries total | 289,866 | -92,644 | 197,222 |
| Crowns and agencies total | 92,273 | -20,796 | 71,477 |
| GOVERNMENT TOTAL | 382,139 | -113,440 | 268,699 |

Source: British Columbia Ministry of Small Business and Economic Development.

Note: The count includes rules associated with tax administration.

“The decentralized approach to achieving progress likely helped create buy-in. . . . When ministry staff realized that they were in charge of determining changes within their own ministries, the reforms became easier to embrace.”

from May 2004. The reports were discussed regularly at cabinet meetings and created a strong culture of accountability across government.

Measurement was critical to assessing whether the political commitment of reducing the regulatory burden by one-third had been met, and it was the cornerstone of the government's overall Regulatory Reform Policy (attached), which was approved by Executive Council in August 2001, just three months after the election. The Reform Policy applies to all proposed legislation, regulations, and related policies. This broad application is another important feature of BC's reforms because much of what the private sector experiences as regulatory burden is in the form of policies and forms rather than in legislation or regulations. Another virtue of the Regulatory Reform Policy is that it is very simple. The entire policy, including definitions, a checklist, an exemption form, and an example is only seven pages long and written in very straightforward language (BC's Regulatory Reform Policy and Regulatory Criteria Checklist are attached).

Complying with the Reform Policy involves two important steps. First, the Regulatory Criteria Checklist must be completed. The checklist has evolved a bit over time, but it essentially requires ministers to confirm that any new rules are needed and that they are outcome based, transparently developed, cost effective, evidence based, and support BC's economy and small business.³¹ Where these criteria are not considered or met an explanation must be provided. At the end of the form, there is a box that asks how many regulatory requirements will be added and how many will be eliminated, as well as what

31. The original 10 criteria were reverse onus: need for regulation is justified; regulatory design: regulation is results based; transparency: transparent development of regulatory requirements; cost-benefit analysis: completed for requirements; competitive analysis: completed for requirements; harmonized: requirements are harmonized with other jurisdictions, avoiding duplication; timeliness: response time is considered; plain language: plain language is used; sunset review and expiry provisions: evaluation of regulations has been considered; replacement principle: additional regulatory requirements have been avoided.

the net change will be. The responsible minister or head of the regulatory authority must sign the form and submit it to the Regulatory Reform Office.³² In addition, he or she must make the Regulatory Criteria Checklist available to the public, at no charge, on request.

When the BC government first introduced the Reform Policy in 2001, two regulatory requirements had to be eliminated for every one introduced. At one point, the ratio was five to one, but today the policy calls for eliminating one requirement for every new one introduced. That policy expires in 2019.

In 2001, requiring regulators to consider the checklist and eliminate two regulatory requirements for every new one introduced represented a dramatic change in thinking about regulation in BC: It put the onus on the government to make the case that additional regulation was necessary, to ensure adequate consultation, to keep compliance flexible, and to reduce the total amount of regulation. One public official commented that it changed her role from regulation “maker” to regulation “manager.”

While the new Reform Policy did change the attitude of those in government over time, there was a lot of initial internal resistance. However, the decentralized approach to achieving progress likely helped create buy-in. Not only were ministries tasked with conducting their own regulatory counts, but each minister was asked to identify how his or her three-year business plan would meet the one-third reduction target.³³ When ministry staff realized that they were in charge of determining changes within their own ministries, the reforms became easier to embrace. The Deregulation Office was not going to tell them specifically what to do, but it was there to offer guidance, support, and feedback from industry about what regulations and policies were considered especially problematic. In addition, the House Leader—the person in the legislature responsible for ensuring government bills become law—had guaranteed that any legislation needed to reduce regulatory requirements would get on the agenda. This guarantee proved a powerful incentive for ministry staff who could sometimes toil away for years on projects that would never see the light of day.³⁴

32. There are limited exemptions to using the checklist, such as changes that are nonregulatory in nature and changes that relate only to the procedures or practices of a court or tribunal. The Regulatory Reform Policy (attached) also includes a more open-ended exemption is provided if “the special circumstances of the case, as identified by the responsible minister or head of the regulatory authority, make it impracticable to comply with the regulatory criteria.”

33. The three-year plans for regulatory reductions were not made public. However, ministries would often announce a review of a particular act or set of regulations and ask for submissions containing suggestions from interested stakeholders.

34. Personal communication with the former director of regulatory reform.

The three-year timeline proved to be a smart choice. It created enough urgency around eliminating regulatory requirements while being enough time to inculcate new habits and acceptance to the new way of doing things.³⁵

Another feature of the first phase of the reform was an extensive set of consultations with the private sector. The Red Tape Task Force, largely made up of industry representatives, was established and tasked with reviewing and prioritizing 150 different submissions with 600 proposals for reform from the business community. Each minister was asked to prepare a three-year deregulation plan outlining how targets would be met. The minister of deregulation gave the priorities and recommendations of the Red Tape Reduction Task Force to other ministers to consider as they prepared these plans.³⁶

Some of the major changes during this period included making significant amendments to the Workers' Compensation and Employment Standards Acts in order to increase flexibility; reviewing more than 3,000 fees and licenses across government and eliminating, consolidating, or devolving 43 percent of them; streamlining the Forest Practices Code; and amending mining, oil, and gas regulations in order to increase flexibility and reduce administration.³⁷

By 2004, BC's premier and minister of deregulation had been successful at achieving their stated regulatory reduction objective. The number of regulatory requirements eliminated at the end of three years was 37 percent, exceeding the one-third target. There is no question that political leadership and disciplined measurement and reporting were critical to achieving this success.

MAINTAINING RED TAPE REDUCTION: THE MIDDLE YEARS 2004-2013

Between 2004 and 2013, regulatory reform was a lower priority for the government. Around the time when the one-third reduction target was met, the minister of deregulation position was eliminated. The Regulatory Reform Office became part of the Ministry of Small Business and Economic Development. The minister responsible was enthusiastic about regulatory reform, but in contrast to the minister of deregulation, he had a long list of other priorities.

35. In 2007, the Canadian federal government set a target to reduce federal regulatory requirements by 20 percent in one year. There was an enormous amount of resistance within the public service to this project, and one year proved too short to change the internal culture. The project died after the initial target was met in 2008.

36. The minister of deregulation asked his colleagues to address the concerns raised by the Red Tape Task Force unless there was a good reason not to. He was not at all prescriptive about how the concerns were addressed.

37. *Ministry of Small Business and Economic Development Deregulation Report.*

As the deadline for meeting the one-third reduction target approached, it became clear that the government had no plans to continue tracking regulatory requirements beyond 2004. Small businesses were concerned that regulatory creep would set in unless the regulatory counting continued. Armed with survey results showing that small businesses wanted government to keep measuring, the Canadian Federation of Independent Business lobbied the minister and his colleagues to establish a new target to maintain the regulatory reduction.

The lobbying effort was successful and the minister agreed to a target for no net increase in regulatory requirements through 2008 (a one-in, one-out rule). The policy of no net increase has subsequently been extended three times—to 2012, to 2015, and, earlier this year, to 2019.³⁸ Pressure from small business to keep a target in place has been critical to preserving the reforms. The target provided a hard-cap constraint on regulators and meant that measurement had to continue. However, there was not much political appetite to build on the reforms and go beyond what had already been achieved.

This period was also characterized by high turnover of staff in the Regulatory Reform Office, with none of the original staff remaining. This situation did not prove difficult in terms of understanding or overseeing regulatory reform, as the policy is concise and clearly written. However, there were many small indications that momentum was fading at the bureaucratic level. For example, the Regulatory Reform Office stopped holding annual conferences to share best practices, and it did not stay up to date in publishing its quarterly reports online.

In November of 2010, a new premier, Christy Clark, was sworn in. Controlling red tape did not seem to be high on her list of priorities. Regulatory reform went into maintenance mode with one important exception: Responsibility for the Regulatory Reform Office went back to the original architect of the reforms, Kevin Falcon. He helped make the reforms more permanent by promoting legislation (which passed in 2011) requiring the government to produce an annual report on regulation that included measurement. CFIB had been lobbying for this change for a number of years based on the concern that a future government might undo the reforms. Legislation requiring annual reporting would make this harder.

38. The Canadian federal government's one-for-one rule applies to regulations, not regulatory requirements, as in BC. The federal legislation would be more comprehensive if it used regulatory requirements, as these are found in legislation, regulation, and policies.

SURVIVING A CHANGE IN LEADERSHIP, 2013–PRESENT

Premier Clark's Liberal Party won the 2013 election with a solid majority. Her campaign had focused on the importance of balancing the budget, paying off debt, and developing a liquefied natural gas industry in the province.

In her first mandate letters to her ministers, Premier Clark emphasized the importance of minimizing red tape. She also announced a core review of government services and made regulatory improvement an important part of the review. This energized the Regulatory Reform Office, and it has been seriously looking at ideas for building on, rather than just maintaining, the existing red tape reforms. As reported above, during the 2015 Red Tape Awareness Week, the small business minister announced the one-in, one-out policy would be extended through 2019. More recently, the government passed a law creating a Red Tape Reduction Day to be held every year on the first Wednesday in March. The language in the release suggests the government itself has embraced the importance of an ongoing commitment to reform: "The new legislation institutionalizes the accountability and transparency in British Columbia."³⁹ The minister responsible also launched a consultation with British Columbians to solicit new ideas for cutting red tape, including encouraging people to use the Twitter hashtag #helpcutredtape to communicate their suggestions.

It is worth noting that, while BC's Regulatory Reform Policy is very broad, it does not cover a few arm's-length-from-government groups in BC that have the ability to impose rules on businesses. In some cases, these groups are clearly creating red tape, and their exemption from BC's policy is problematic.

DID REGULATORY REFORM MAKE A DIFFERENCE TO BRITISH COLUMBIA'S ECONOMIC PERFORMANCE?

There is no question that BC's economic performance improved markedly after 2001 in contrast to the "dismal decade" of the 1990s. The province went from being one of the worst performing in the country to being among the best. How big a contribution did regulatory reform make to BC's economic turnaround? It is hard to answer that question definitively because regulatory reform was part of a broader package of economic reforms happening at the same time. For example, when the Liberals came into office, one of the first things they did

39. British Columbia Ministry of Small Business and Red Tape Reduction, "B.C. Puts the Spotlight on Cutting Red Tape," news release, September 30, 2015, <https://news.gov.bc.ca/releases/2015SBRT0010-001627>.

was reduce personal income tax rates across the board by 25 percent, eliminate the provincial sales tax on production machinery and equipment, and eliminate the corporate capital tax on nonfinancial institutions.

Despite the challenge of not being able to quantify the extent to which regulatory reform contributed to BC's economic turnaround, it is worth a brief overview of some of the economic changes. The BC government set up the British Columbia Progress Board in 2001 to produce benchmark reports describing the province's standard of living, job performance, environmental quality, health outcomes, and social condition relative to other provinces. Economic indicators from Progress Board reports show how BC's position relative to other provinces improved. For example, economic growth in BC was 1.9 percentage points below the Canadian average between 1994 and 2001 but 1.1 percentage points above the Canadian average between 2002 and 2006.⁴⁰ BC's real GDP growth was lower than Canada's as a whole in six of the nine years between 1992 and 2000, but BC's GDP grew faster than Canada's every year between 2002 and 2008.⁴¹ Per capita disposable income in BC was C\$498 below the national average in 2000, but by 2006, it was C\$60 above the national average, third behind Alberta and Ontario.⁴²

Business creation also improved. The number of incorporations in BC jumped from 20,759 in 1998 to a high of 34,036 in 2007. The number of incorporations between 2008 and 2013 were a bit lower, ranging from 26,431 to 32,225, but even the lowest year was higher than any time in the 1990s.⁴³ The number of business bankruptcies in BC also decreased considerably over the same time period, from 1,031 in 1998 to 454 in 2008. The number of business

“A poorly performing economy initially allowed for the more aggressive “deregulation.” Once the economy improved, the context changed and “regulatory reform” was more acceptable to the public.”

40. BC Progress Board, *8th Annual Benchmark Report* (Vancouver, December, 2008), 19.

41. Jock Finlayson, “BC Economy: A Retrospective,” *Policy Perspectives* (Vancouver: British Columbia Business Council, April 2009).

42. BC Progress Board, *8th Annual Benchmark Report*.

43. BC Stats (British Columbia government), Business Formations and Failures, <http://www.bcstats.gov.bc.ca/StatisticsBySubject/Economy/BusinessFormationsandFailures.aspx>.

bankruptcies per year has been falling since 2003 and was only 189 a year by 2013.⁴⁴

Anecdotal evidence suggests that red tape reduction was an important contributor to British Columbia's recovery. For example, mining is a historically important industry in BC that was in decline in the 1990s, but it rebounded after 2000. According to a task force on mining established by the government in 2008, "The provincial government has taken many important steps—improving its tax competitiveness, streamlining regulatory requirements and investing in the province's geosciences mineral data collection and analysis—to enhance BC's reputation as an important mining jurisdiction and industry has responded with record exploration levels and the opening of new mines in the recent period of economic growth."⁴⁵ This statement is typical of the kinds of statements coming from industry at a time when tax and regulatory competitiveness are highlighted as key to the provincial economic turnaround.

LESSONS FROM THE BC MODEL FOR US GOVERNMENTS INTERESTED IN RED TAPE REDUCTION

The United States and Canada share more similarities than differences in overall economic conditions and general cultural attitudes, which makes Canada's experience with red tape reduction and control relevant to the United States. US governments at the state and federal level will find much to borrow from and some things to improve upon in the lessons from British Columbia.

Lesson #1: Language Matters

BC's reforms were born in the context of "hitting the wall" with uncompetitive taxes and excessive regulation. This situation created a climate where the general public supported making cutting regulation a clear priority. A poorly performing economy initially allowed for the more aggressive "deregulation." Once the economy improved, the context changed and "regulatory reform" was more acceptable to the public. More recently, a senior minister commented how helpful it was to make a distinction between red tape and necessary regulation.⁴⁶ Indeed, it is much harder to argue against cutting red tape, a problem most can relate to in some way, than it is to argue against regulatory reform,

44. Ibid.

45. BC Mining Economic Task Force, *Mining Economic Task Force Report*, January 2009.

46. Personal conversation between author and Naomi Yamamoto (former BC minister of jobs and tourism and small business), 2015.

which can be confused with cutting justified regulations. The language used in BC today is better at maintaining public support for cutting red tape, and it would likely have been as effective, if not more effective, than the “deregulation” language used at the beginning of the reforms. Indeed much of the “regulation” that was cut (such as restaurants being told what size televisions they could have in their establishments) was clearly red tape.

Lesson #2: Political Leadership Matters

Regulatory reform in BC has been successful because it has had strong political champions. Leadership from the top was critical to the success of the reforms. However, it was also important in the early years to have other strong political leaders who could lead the execution of the reforms. In BC’s case this initially came from the minister of deregulation, whose sole responsibility was to focus on effectively implementing the reforms.

For regulatory reform to be successful, it must have broad buy-in from politicians and from civil servants. The buy-in in BC was the result of strong political leadership from the top, a decentralized approach to reform where ministries could choose the regulatory requirements to cut, and a three-year timeline, which created urgency while still allowing time to adapt to the change.

Lesson #3: A Clear, Credible, Simple Measure Matters

One thing that distinguishes BC’s regulation reforms is the clear metric that was used to establish whether the reforms were successful. BC’s measure has several virtues: it is clear, fairly comprehensive, and easy to update. There is no perfect way to measure the broad burden of regulation, and there are certainly alternative approaches to the regulatory requirement metric used in BC that would be just as good, if not better. However, too often, regulatory measures become so complex that they are too expensive for governments to consider adapting, and it is not at all clear that the additional complexity delivers more accuracy or better results. A simple measure has the added advantage of being easy to communicate to the public.

Lesson #4: A Hard-Cap Constraint on Regulators Matters

At the federal and state levels in both Canada and the United States, regulatory impact analysis has been used as a “check” on regulators. RIAs may slow down the growth of regulatory activity, but available evidence suggests that

they do not stop it. BC's target of reducing regulation requirements by one-third in three years and then maintaining the reduction has set a hard cap on the total amount of regulatory requirements. This has forced a discipline that did not previously exist, a discipline that has helped change the culture within government to one where regulators see their job as focusing on the most important rules.

One of the challenges for governments interested in reducing, rather than just controlling, red tape is picking a reduction target. BC's choice of a one-third reduction target was not scientific. However, the political "gut feeling" was that a one-third target would be achievable without compromising justified regulation. The choice seems to have been reasonable, as there is little evidence that the regulatory reduction in the province compromised health, safety, or environmental outcomes. Interestingly, on the CFIB survey, small business owners in both Canada and the United States also suggest that about a one-third reduction in rules is possible without compromising the legitimate objectives of regulation (see figure 1).

As was mentioned at the beginning of this paper, the Canadian government recently adapted BC's one-in, one-out policy, becoming the first country in the world to legislate a hard cap on regulations.⁴⁷ The legislation is new, but it has been the policy of the government for the past several years. As of December 2013, the rule had achieved a net reduction of 19 regulations, saving business 98,000 hours and \$20 million.⁴⁸ While this reduction is small in the grand scheme of the costs of the overall regulatory burden, it is nonetheless a quantifiable reduction and another indication that hard caps matter.

Lesson #5: Institutionalizing Red Tape Control Matters

Perhaps one of the most remarkable things about the BC model is its longevity. An important transition happened once the initial one-third reduction target was met: a new target for zero net increase in regulatory requirements was set. The government has extended this commitment several times and ensured that measuring red tape requirements has continued. While it is impossible to say with certainty that there would have been more red tape without the controls, it is clear that there would have been less transparency and less ability

47. As noted earlier, the Canadian federal government's one-in, one-out rule is narrower than BC's because it only applies to regulations, not to rules found in legislation and policies. However, unlike BC's rule, the federal one-in, one-out is legislated rather than just a policy commitment.

48. "Reducing Red Tape," Canada's Economic Action Plan, accessed November 2, 2015, actionplan.gc.ca/en/initiative/reducing-red-tape.

to evaluate the broad regulatory burden without the ongoing measure, which provides a benchmark.

In contrast, Nova Scotia's government implemented its own red tape initiative, which had some initial success, but it was not followed by institutional commitment. Several years after BC launched its reforms, the Nova Scotia government was convinced of the merits of setting and measuring targets. In 2005, Nova Scotia set a target for a 20 percent reduction by 2010 in the time business owners spend on regulation. The starting benchmark was 613,000 hours, and the government successfully achieved its goal. It then stopped measuring and there is currently no way to know whether the time spent by businesses complying with rules has increased, decreased, or stayed the same. A recent report commissioned by the Nova Scotia government strongly recommends that the government find effective ways to eliminate red tape, including reestablishing measurement and "creating mechanisms, including legislation, to sustain the regulatory modernization agenda over the long term."⁴⁹

Final Lesson: Outside Advocacy Can Make All the Difference

Regulation is largely a hidden tax that most directly affects business owners, in particular small business owners. Having the support of organizations that represent small businesses has been very important in keeping the BC government committed to its reforms and in encouraging other governments in Canada, including the federal government, to follow the example set by BC. In fact, without the advocacy coming from small business, it is doubtful that BC's reforms would still be in place today.⁵⁰ Several effective steps that the CFIB⁵¹ took in pushing to continue reforms include the following:

- Regularly meeting with politicians from the governing party and opposition parties to present survey results from small businesses that showed why it was important to continue the reforms. These meetings helped make red tape reduction a nonpartisan issue that all parties could support. This strategy worked at the federal level too.

49. Laurel C. Broten, *Charting a Path for Growth: Nova Scotia Tax and Regulatory Review*, report prepared for province of Nova Scotia, November 2014.

50. In personal meetings with many BC ministers in 2003, some were of the view that once the one-third reduction target was met, there would be no further need to report regulatory targets. This view changed once it was pointed out that it would be difficult to maintain the reductions without ongoing targets and tracking.

51. Following the initial progress, other business groups seemed to lose interest in BC's broad regulatory reform program, but one committed organization was enough to keep the reforms alive.

- Issuing an annual report card on governments across Canada. BC was the only jurisdiction to get an A and wanted to keep it.
- Holding an annual “Red Tape Awareness Week,” which keeps a spotlight on the issue and gives politicians credit and publicity for making announcements about cutting red tape.
- Publishing research reports estimating the costs of the broad regulatory burden and red tape.
- Connecting business owners with media during Red Tape Awareness Week so that the public could get a better understanding of the costs and frustration of red tape.
- Issuing an annual “Golden Scissors” award for cutting red tape. Kevin Falcon, the BC minister responsible for the initial reforms, was the first to receive the award.

CONCLUSION

As average incomes in countries like Canada and the United States have increased, the demands for better health, safety, and environmental provisions have also increased.⁵² Available evidence, while limited, suggests that at least some of these demands have been expressed in an increase in the number of mandatory rules our governments issue. It seems reasonable to assume that some of the increase in the broad regulatory burden is justified regulation and some is red tape.

The challenge for modern governments is to control the growth of red tape in the messy real world, where measures are imperfect and the line between justified regulation and red tape can be difficult to establish. The BC model of red tape reduction stands out for its simplicity, effectiveness, and longevity. Not only did the BC government accomplish its goal of reducing the number of regulatory requirements by more than one-third in three years, it has maintained the reduction for over a decade. Its approach, which is very different from what other governments have tried, uses essential ingredients that are really just common sense: measurement, a cap on the total burden of regulation, and political leadership. A blueprint for common sense regulatory reform is long overdue, and I hope it proves useful to US governments interested in improving the welfare of their citizens. Reducing red tape has the power to unleash entrepreneurship and make us all better off.

52. Economists generally consider environmental, health, and safety protections to be “normal goods” in the sense that as incomes increase so too does the demand for a normal good.



Purpose

The Regulatory Reform Policy ensures that legislation, regulation and its administrative policy and forms, meet the principles established and directed by Cabinet. It ensures that all new regulatory requirements are necessary, outcome-based, and not overly burdensome.

This policy also ensures that the Government of British Columbia (B.C.) meets its commitment of a net zero increase in regulatory requirements through to the end of 2015.

Track and Report

Continually measuring and monitoring progress is an important element of how the goals of regulatory reform are met in B.C. In 2001, an inventory of all regulatory requirements was created. Since 2001 this number has dropped by 42.8%.

To ensure the regulatory burden on citizens and businesses does not increase, a regulatory cap (zero net increase) was imposed. To meet this commitment there can be no overall increase in the number of regulatory requirements in B.C. until 2015.

When a new regulatory requirement is introduced, an existing requirement is eliminated.

See [Measuring Progress](#) for more information.

To achieve this, ministries support public reporting by:

1. Maintaining a count of the number of regulatory requirements imposed by, or under the authority of, all Acts for which they are responsible (their count).
2. Informing Regulatory Reform BC of any changes to their count
3. Updating the [Regulatory Requirement Database](#), managed by Regulatory Reform BC, so it contains an accurate representation of their count, at any given time

See [How We Count](#) for more on the regulatory requirements count and instructions on how to count.

Useful Contacts

Regulatory Reform Branch | Ministry of Jobs, Tourism and Skills Training
PO Box 9822 | STN PROV GOVT | Victoria, BC | V8W 9N3
Phone: 250-952-0164 | [Email](#) | [Web](#)



Apply the Regulatory Reform Principles

The following 5 principles are considered when developing and drafting all new or revised legislation, regulation, policy and forms. Special consideration of the impacts to small business and the economy should be given. Applying these principles will ensure all legislation, regulation, policy and forms are:

1 — Needed and efficient

- It is the only effective and necessary way to achieve the desired outcomes.
- It compliments and does not duplicate legislation, regulation, policy and/or forms already in place.
- It is designed to be simple and efficient to administer and to comply with.

2 — Outcome based and regularly reviewed

- Performance measures are used that directly relate to the desired outcomes.
- It will be reviewed regularly and amended to ensure intended outcomes are met. It will be repealed when it is no longer relevant.

3 — Transparently developed and clearly communicated

- The reasons for it, as well as the process by which it is developed and implemented are clear and open.
- It is easy to understand and written in plain language. Citizen and businesses can easily understand their rights and obligations.
- It is easily accessed by all target citizens. Appropriate and modern service delivery methods are used.

4 — Cost effective and evidence based

- Analysis found it to be the most cost effective way of achieving the desired outcomes.
- The benefits to small business, the public, government, and/or the economy are greater than the burden it imposes.

5 — Supportive of B.C.'s economy and small business

- It will not have a negative impact on B.C.'s economic competitiveness. It is not harder to comply with than in other relevant jurisdictions.
- It fits with government's strategic goals for economic growth and sustainability. It supports job creation and families, as well as small, emerging, environmentally sustainable, and/or rural-based businesses, or at least is not a barrier to them.



How to Comply

There are three processes that ensure these policy objectives are met. One of the following will apply:

1. **Request for Legislation (RFL) Process** — ministries must do the following for all legislation that is submitted as a draft for Executive Council review:
 - Included a signed copy of the [Regulatory Criteria Checklist](#) or the [Regulatory Criteria Exemption Form](#) in all legislative Review Committee packages submitted to Cabinet Operations
 - For changes expected to increase the number of regulatory requirements, include a statement within the RFL template indicating that Regulatory Reform BC has been consulted and that offsets will be found
 - See the [Cabinet Operations website](#) for the [RFL](#) instructions and templates.
2. **Order in Council Process** — ministries must include the following in the Order in Council templates:
 - A statement indicating the Regulatory Reform Principles have been considered
 - An estimate of the expected change to the regulatory requirements count
 - For changes expected to increase the number of regulatory requirements, a statement indicating that Regulatory Reform BC has been consulted and that offsets will be found
 - See the [Cabinet Operations website](#) for [OIC](#) instructions and templates.
3. **Policy and Forms Process** — The Minister (or equivalent) responsible for the authorizing legislation and/or regulation is responsible to ensure the Regulatory Reform Principles have been applied to the planning, development, and drafting of all policy or forms.

When an increase or decrease to the Regulatory Requirements Count occurs as a result of new or revised legislation, regulation, policy or forms, ministries must:

1. Send a copy of all [Regulatory Criteria Checklists](#) or [Regulatory Criteria Exemption Forms](#) to Regulatory Reform BC
2. Update the [Regulatory Requirement Database](#) to reflect the change
3. Ensure all signed forms are accessible under the *Freedom of Information Act* and available to the public, upon request, at no charge



The Forms

The Regulatory Criteria Checklist

The Regulatory Criteria Checklist is completed to demonstrate that:

- The Regulatory Reform Principles have been applied to the development and drafting of all new or revised legislation or regulation
- Regulatory Reform BC has been consulted on changes expected to increase the number of regulatory requirements
- Ministries understand the impact any new or amended legislation and regulations will have to the regulatory requirements count
- Ministries will offset increases to the count in order to maintain the zero net increase
- Ministries are publically accountable for any increases to the regulatory requirements count

Regulatory Criteria Exemption Form

Ministries may complete a Regulatory Criteria Exemption Form, instead of a Regulatory Criteria Checklist, if they can certify that the legislation or regulation satisfies one or more of the following conditions:

- Is housekeeping in nature, such as changes that clarify or correct without changing requirements (ex. changes to board members or schedules)
- Fee rate changes approved by Treasury Board
- Relates only to the procedures or practices of a court or tribunal
- Is required under national legislation or regulations, to which regulatory reform principles have been applied
- Is consolidated and revised under the revision powers in Part 2 of the Regulations Act Regulation
- Is transitional in nature
- Special circumstances, as identified by the responsible minister or head of the regulatory authority, make it impracticable to apply the Regulatory Reform Principles

This releases ministries from the requirement to apply the Regulatory Reform Principles to the drafting of all new or revised legislation or regulation.



Definitions

Legislation: A law of general application made directly by Parliament or a Legislative Assembly in the form of statutes (commonly known as "Acts").

Plain Language: No technical, legal, bureaucratic or academic words or acronyms are used. Sentences are short, direct and use active voice at a grade 6 reading level.

Regulation: Subordinate legislation or a law of general application made by another body or person under the authority of an Act.

Regulatory Authority: A government agency that regulates in the public interest.

Regulatory Requirement: An action or step that must be taken, or piece of information that must be provided in accordance with government legislation, regulation, policy or forms, in order to access services, carry out business or pursue legislated privileges.

Small Business: A business in B.C. with fewer than 50 employees.

Zero Net Increase: The Government of B.C.'s commitment to not exceed the number of regulatory requirements as counted in June 2004.



Regulatory
Reform BC

Regulatory Criteria Checklist

The purpose of the checklist is to demonstrate that legislative and regulatory changes have been developed according to the **Regulatory Reform Policy**, while still protecting public health, safety and the environment.

Name of authorizing legislation:

Name of regulation, if applicable: **N/A**

Purpose:

Regulatory Criteria

I certify that the following Regulatory Reform Principles were considered for this legislation or regulation:

1. Is needed and efficient
2. Is outcome based and will be regularly reviewed
3. Was transparently developed and will be clearly communicated
4. Is cost effective and evidence based
5. Is supportive of BC's economy and small business

Please provide an explanation if any of the criteria above were not considered (continued on page 2):

Number of Regulatory Requirements to be added: **+**

Number of Regulatory Requirements to be eliminated: **-**

NET CHANGE: **0**

Date:

Signature, Responsible Minister or Head of Regulatory Authority

Signator Name:

Ministry/Agency Name:

Contact Name:

Mr. PALMER. Thank you for your testimony.

The chair now recognizes Mr. Vickers for five minutes for his testimony.

STATEMENT OF MATT VICKERS

Mr. VICKERS. Great. Firstly, I want to thank the Committee on Oversight and Government Reform and the subcommittee members here today for the opportunity to discuss standard business reporting.

My name is Matt Vickers. I work for a publicly listed accounting software company Xero.

In 2005, the Australian Government established a task force to review compliance burdens on Australian businesses. Their report shared that a typical New South Wales business spends 400 hours per year or A\$10,000 on the preparation and sending of paperwork to government. It's estimated that the total cost of regulation to the Australian economy in 2005 was A\$86 billion or 10 percent of that country's gross domestic product. That's about \$62 billion U.S. And Australia has 7 percent of the population of the United States, so you can extrapolate from there.

The task force offered 100 recommendations for reducing the regulatory burden on businesses. One recommendation was to simply financial reporting for individual businesses, and a standard business reporting work group was established. The work group aimed to optimize existing government processes to reduce business compliance costs to A\$800 million over six years at a cost of A\$320 million.

Standard business reporting, or SBR, is the idea that multiple regulatory agencies should agree on common standardized data structures and elements for the information they collect from private sector businesses. By asking for this information in a consistent fashion, it removes the need for a business to resubmit the same information in multiple ways for multiple agencies.

So I could ask you to imagine a small business in Wisconsin or Kentucky or California being able to add a new employee into their system or add a new director or shareholder or prepare all their State and income taxes and have all the relevant Federal and State agencies being given updated information almost instantaneously as the result of one data change within—made by the business owner. And imagine being able to do all that from a single piece of software. That's the power of this SBR and that's what we're talking about here.

SBR does not change the intent or the content of regulatory reports but instead improves the efficiency of the government-business interactions by standardizing the information the private sector is required to report. The implementation of SBR began in 2008 and the first reports were available two years later. It did not require any regulatory change. And as the chairman stated in his opening remarks, the Australian Tax Office estimated that the changes saved the government and companies A\$1.4 billion in compliance costs during the 2016 tax year, far exceeding that original six-year goal of A\$800 million. In 2018, an Australian business can now interact with three Federal and eight State agencies in a sin-

gle software environment. More agencies are planned to come on board in the future.

SBR removed the technology and cost barriers for Xero and other software vendors like us to integrate securely with multiple government systems. Xero's software now allows Australian businesses to make use of a single regulatory reporting solution for multiple agencies direct from their accounting system.

In the U.S., there are a number of relevant policy reforms already under way. This committee has already accomplished a large governmentwide data standards project. The Digital Accountability and Transparency Act of 2014 mandated that the Treasury Department create a governmentwide data taxonomy. The DATA Act information model scheme that now governs around 100 Federal agencies report their spending activity. This shows that the government here is now practiced at such reforms.

The House of Representatives unanimously passed the Open, Public, Electronic, and Necessary Government Data Act as part of the Foundations for Evidence-Based Policymaking Act, which would require all Federal agencies to maintain public data assets in machine-readable formats. And just last night, the House passed the Grant Reporting Efficiency and Agreements Transparency Act, which accomplishes reforms similar to SBR for U.S. Federal grant reporting.

Though none of these ledgers of reforms explicitly address Federal financial reporting by all businesses, they do offer examples of efforts to seek governmentwide reporting standards and require machine-readable data for reporting in other domains. In the United States where Federal and State agencies operate on a much larger scale, legislation is likely to be required to compel agencies to work together to accomplish reforms similar to the SBR program in Australia.

The Financial Transparency Act is a bipartisan legislative proposal which would require all eight major Federal financial regulators to adopt a standardized data structure for the information they collect from public companies, banks, and financial firms, and with the right support in Congress, such legislation could form the basis of genesis of SBR in the United States.

It's our belief that well-deployed technology has the potential to reduce the cost of government and compliance to the taxpayer. By reducing the compliance burden of small businesses, the capital can be redeployed to pursue income-generating activities. Like a tax cut, this puts money back in the hands of small businesses. But unlike a tax cut, this gives them something else: time. We believe the U.S. Government can realize these benefits on a far greater scale than the Australian example.

Thank you for the opportunity to testify. Thanks.

[Prepared statement of Mr. Vickers follows:]



CONGRESSIONAL TESTIMONY

The Benefits of a Deregulatory Agenda: Examples from Pioneering Governments

Testimony before Subcommittee on Intergovernmental Affairs and the Subcommittee on Healthcare, Benefits and Administrative Rules

House Committee on Oversight and Government Reform
United States House of Representatives

27 September 2018

Matt Vickers
Product - New Markets, Xero

I want to thank the Members of the House of Representatives Committee on Oversight and Government Reform, the Subcommittee on Intergovernmental Affairs and the Subcommittee on Healthcare, Benefits and Administrative Rules for this opportunity to discuss the genesis and implementation of Standard Business Reporting by the Australian Government.

My name is Matt Vickers. I lead research into new geographic markets for publicly listed accounting software company Xero.

The Origins of Australian Standard Business Reporting

In 2005, the Australian Prime Minister John Howard established a taskforce to investigate the compliance burdens on Australian businesses from government regulations, and to recommend practical options for reducing them.

In 2006 the taskforce produced a report titled "Reducing Regulatory Burdens on Business".¹ The report cited a New South Wales State Chamber of Commerce submission² that estimated a typical New South Wales business spends 400 hours per year, or 10,000 Australian dollars,³ on compliance. That same submission claimed senior leaders at some large companies can spend up to 25% of their time on compliance. In total, the Australian Chamber of Commerce and Industry estimated that the total costs of regulation to the Australian economy in 2005 was 86 billion Australian dollars,⁴ or 10% of the country's gross domestic product.

¹ [Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business](#), January 2006

² [Regulation Taskforce Submission](#), NSW Chamber of Commerce, November 2005

³ \$10,000 AUD = \$7,200 USD

⁴ \$86b AUD = \$62b USD

The taskforce who authored the report offered 100 recommendations for reducing the regulatory burden on businesses, covering changes to social and environmental legislation, trade, the labor market, consumer protections, financial and corporate legislation, tax, trade, and superannuation, Australia's employee retirement fund program. They also made recommendations on the root causes of over-regulation, hoping to decrease the incidence of new burdens being created in the future.

One key recommendation was to reduce the burden of financial reporting on individual businesses, and a Standard Business Reporting (SBR) workgroup was established. The workgroup's mission was straightforward: implement changes to existing processes to reduce the cost to business compliance by 800 million Australian dollars over six years, at a cost of 320 million AUD over the same period.⁵ Key to the project's success was the establishment of the SBR Business Advisory Forum, containing representatives from industry groups and the software vendors who would ultimately implement support for any changes into their products.

Standard Business Reporting, or SBR, is the idea that multiple regulatory agencies should all agree on a common, standardized data structure for the information they collect from private-sector companies through their reporting requirements. SBR does not change the intent, or the content, of the regulatory reports, but rather improves the efficiency of the government's information collection mechanisms by reconciling and structuring the information the private sector is required to report to the public sector. These harmonized data collection practices reduce compliance costs significantly.

While the initiative was ultimately projected to involve the all government agencies interacting with businesses, it was decided that the first stage would cover the "General Ledger" agencies, which receive taxation, financial and company reports from businesses, before proceeding to the "Trade" agencies, which receive customs and international trade reports, and which only apply to a subset of businesses.

The implementation of SBR in Australia began in 2008 and the first reporting mechanisms were available two years later. The Australian Tax Office officially estimated that Australia's SBR program saved the government and companies 1.4 billion Australian dollars in compliance costs during the 2016-17 fiscal year,⁶ far exceeding its original six year goal of 800 million Australian dollars.⁷

Standard Business Reporting in Practice

The aim of SBR is to provide a single mechanism for the business community to interact with multiple government agencies through a well-defined and shared standard. The effect of this change is that in 2018, an Australian business can now interact with three federal and eight state agencies in a single software environment. More agencies are planned to come on board in the future.

⁵ 576m USD at a cost of \$231m USD

⁶ *Program 1.3: Australian Business Register*, Australian Tax Office, October 30, 2017.

⁷ 1 billion USD saving in one year against original target of 576m USD over five years.

SBR is made possible by creating a single taxonomy for data elements requested from the business community. A data element is a single unit of information requested from a business. Examples of data elements include the date of commencement for a business, total sales in a given month or year, legal trading name, and so on. By asking for this information in a consistent fashion, it removes the need for a business to resubmit the same information in multiple ways for multiple agencies. It may seem like a small thing, but this simple harmonization in data collection drastically reduces compliance costs over the lifetime of the business.

I should emphasize here that in the Australian example, none of this required regulatory change, or a review of existing legislation. This was merely a change to government practices and the way they managed data collection in order to meet the needs of existing regulations.

Steps for Implementation

The Organisation for Economic Co-operation and Development (OECD), an intergovernmental economic forum representing thirty-six member countries including the United States and Australia, has established a Forum on Tax Administration that identified four steps to implement SBR.⁸

1. Create a national taxonomy which can be used by businesses to report information to the Government (that taxonomy could encompass all data from outset or be built up gradually),
2. Use the creation of the national taxonomy to drive out unnecessary or duplicated data descriptions,
3. Enable the use of the taxonomy for financial reporting to Government and facilitate straight-through reporting for many types of reports directly from accounting and reporting software in use by business and their intermediaries, and
4. Create supporting mechanisms to make SBR efficient where they do not already exist (e.g., a single Government reporting service or portal or gateway).

In order to adopt SBR in the United States, a similar process could be followed. General ledger agencies in the United States could be identified and, with the right governance structure and representation from industry groups like the Data Coalition and vendors like Xero, work could begin on a national taxonomy where common data elements are identified and duplicate or redundant elements are eliminated. This would form the basis for which required financial reports can be defined and published.

Implications for Xero and Other Software Vendors

The implementation of SBR in Australia reduced the barriers for software vendors like Xero, which provides cloud accounting technology to Australian businesses, to integrate securely with government systems. Xero's software allows businesses to interact with multiple government agencies and for smaller businesses to have access to an integrated regulatory reporting

⁸ Guidance Note: Standard Business Reporting, Organisation for Economic Co-operation and Development, Forum on Tax Administration: Taxpayer Services Sub-Group, July 2009, at 9.

solution. Xero does not have any particular privileges in being able to provide these tools to our customers; over 100 other software vendors have elected to provide these functions to their customers as well. However, by aligning our software to both the needs of customers and the needs of government, we are able to more effectively compete with other vendors in a way that also benefits government agencies.

The Status of the United States

Now that we have described the Australian SBR program, let us review the current U.S. policy reforms already underway.

Under the Paperwork Reduction Act, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) reviews and approves all economically-significant federal regulatory information collections. Currently OIRA does not use this authority to insist on conformity to a standardized data structure for these information collections. This Committee could explore options to extend OIRA's authority and capabilities under the law.

The current Administration appears to be interested in such solutions. For instance, in March of this year, the White House released its management agenda on modernizing government in the 21st century. I note that three of the corresponding Cross-Agency Priority (CAP) Goals in that agenda explicitly refer to reducing compliance burdens related to data collection for both business and intergovernmental reporting.

In the United States, where federal and state agencies operate at on a much larger scale, legislation may be required to compel agencies with compatible reporting requirements to work together to accomplish a reform at the scale of Australia's SBR program.

The United States, and this Committee in particular, has already accomplished such a large governmentwide data standards setting project. The Digital Accountability and Transparency Act of 2014, or DATA Act, mandated that the Treasury Department create and maintain a governmentwide data taxonomy: the DATA Act Information Model Schema (DAIMS) now governs how around 100 U.S. federal agencies report their spending activity. The DAIMS does not cover regulatory reporting, but it shows that the U.S. government is now practiced at such reforms.

Similarly, this Committee and the U.S. House have passed the Open, Public, Electronic and Necessary (OPEN) Government Data Act, as part of the Foundations for Evidence-Based Policymaking Act (H.R. 4174), which would require all federal agencies to maintain public data assets in machine-readable, semantically structured formats so that it can be "easily processed by a computer without human intervention."

Lastly, this Committee has also recently passed the Grant Reporting Efficiency and Agreements Transparency (GREAT) Act (H.R. 4887) which would require the creation of governmentwide data standards for information reported by recipients of federal grant and financial assistance awards. While none of these legislative reforms explicitly addresses federal financial regulatory

⁹ President's Management Agenda: Modernizing Government for the 21st Century, March 2018

¹⁰ See the definition for "machine-readable" on page 17, line 11 of the Foundations for Evidence-Based Policymaking Act (H.R. 4174)

reporting for U.S. organizations, they do offer examples of U.S. efforts to set governmentwide reporting standards and require machine-readable data for reporting in other domains.

However, some federal and state regulatory agencies coordinate the content and standards of the information they collect from regulated entities. The Internal Revenue Service (IRS) and state tax authorities maintain a common data structure for individual and corporate tax reporting. Yet, the mechanisms for collecting this information remain disparate.

There is a proposal before Congress to begin work on fostering a unified regulatory reporting standard for the financial regulatory agencies. The Financial Transparency Act (FTA) (H.R. 1530) represents a bipartisan legislative proposal, which would require all eight major federal financial regulators to adopt a standardized data structure for the information they collect from public companies, banks, and financial firms. With the right support in Congress, such legislation could form the genesis of SBR in the United States.

Summary

At Xero, it's our belief that well-deployed technology has the potential to reduce the costs of government and compliance to the taxpayer. By significantly reducing the compliance burden of small businesses their capital can be redeployed to pursue income-generating activities. When the number of annual hours spent on compliance by the United States' 30 million small businesses is reduced collectively, you have the potential for a staggering amount of economic benefit and to substantially increase the competitiveness of the United States small business economy. Like a tax cut, this puts money back in the hands of small businesses, but unlike a tax cut, this also gifts them with a possibly more precious resource: time. We believe that by adopting an approach similar to the Australian SBR program, the U.S. government can realize these benefits on a far greater scale than the Australian example. Thank you for this opportunity to testify.

Xero Limited is a New Zealand-based accounting software company that was established in 2006. It is publically listed on the Australian Stock Exchange, and its U.S. interests are represented by its U.S. subsidiary, Xero Incorporated. As of 27 September 2018, Xero has received no funding from the U.S. government. Per Xero's last annual report, it employs over 2,000 people worldwide and over 300 Americans, and has almost 1.4 million customers worldwide. Xero's books are audited annually by Ernst & Young.

¹¹ [What's New with Small Business?](#), U.S. Small Business Administration, August 2018

Mr. PALMER. I thank the gentleman.

The chair now recognizes Mr. Brinkman for five minutes for his testimony.

STATEMENT OF SCOTT BRINKMAN

Mr. BRINKMAN. Thank you, Chairman Palmer and Jordan, Ranking Members Krishnamoorthi and Raskin, and members of the subcommittees, for affording me this opportunity to discuss Governor Bevin's Red Tape Reduction Initiative.

Governor Bevin campaigned on a theme that is all about jobs, which at its core means creating a more inviting environment to attract both human and financial capital. Candidate Bevin's Blueprint for a Better Kentucky listed seven action items that he would pursue if elected Governor. One of the action items was reforming State Government. Although there are many aspects to reforming State Government, a key component of that effort is modernizing Kentucky's administrative regulations, and one of the first undertakings of the administration was the formulation and implementation of its Red Tape Reduction Initiative.

As part of this initiative, every cabinet and agency within the executive branch has been directed to review every regulation promulgated by—over the years and make one of the following determinations: First, completely repeal the regulation as its original purpose is no longer relevant.

second, amend the regulation to conform it to a Federal counterpart. This effort includes eliminating inconsistent definitions and standards with the goal that the State regulation should never be more burdensome than the Federal counterpart unless circumstances unique to Kentucky require a stricter standard.

Third, amend and modernize the regulation to make it clear and simpler to understand by those subject to the regulation, and also make it easier to update in the future.

Fourth, combine the regulation with other regulations to include a single subject matter such as fees and applications in one regulation for ease of review by those subject to it.

Finally, leave the regulation as it's currently written.

The goal of the administration is to reduce by one-third the number of restrictions on businesses and individuals in Kentucky. In 1975, there were four volumes of regulations in effect in Kentucky. That number had grown to 14 volumes when Governor Bevin took office. Our current data reflects that, of the approximately 4,700 separate regulations on the books at the outset of the administration, over 2,700 regulations have been reviewed, 488 regulations have been repealed, 454 regulations have been amended, and 56 new regulations have been promulgated.

The initiative has the support of business groups, trade associations, chambers of commerce, and other organizations across Kentucky. There are several lessons to be learned from Kentucky's Red Tape Reduction Initiative. First, the Governor must own the initiative in every aspect, and it helps to have a tangible symbol associated with the endeavor. In the case of Kentucky, we created the lapel pin that I'm wearing today, and Governor Bevin and his top officials wear this pin every day. Further, Governor Bevin speaks out regularly regarding the initiative—the importance of the Red

Tape Reduction Initiative to individuals and groups throughout Kentucky. As a result of the Governor's leadership, there is growing awareness of the initiative every day throughout the Commonwealth.

Second, it is important to create a website that is interactive with the public and allows for individuals to post recommendations on the repeal or amendment of regulations. Kentucky's Red Tape Reduction Initiative website is RedTapeReduction.com. Kentuckians have submitted scores of thoughtful ideas on how to reduce unnecessary regulations that drive up the cost of conducting business and create inefficiencies without contributing to public health or public safety.

Finally, the effort of the cabinets and other agencies must be sustained on a regular basis. Our cabinets and other agencies regularly review and re-review existing regulations to ensure that the goals of the Red Tape Reduction Initiative are being met. This is a thoughtful and deliberative process that never ends.

We have also decided to digitize and modernize the manner in which our State agencies draft and promulgate regulations. To that end, Kentucky has contracted with Esper Regulatory Technologies, Inc., to provide state-of-the-art technological tools to our regulation drafters throughout the executive branch to assist them in the review of existing regulations and the promulgation of new regulations.

In conclusion, the administration's efforts to simplify the ability of Kentuckians to conduct business are paying valuable dividends. As of last month, Kentucky's unemployment rate was 4 percent, which is the lowest it has been since 1976 when this statistic began to be tracked, and its workforce participation rate is trending towards 40th in the Nation from 47th when Governor Bevin took office.

Kentucky also realized during the month of April this year the highest amount of monthly tax receipts in its history, driven largely by corporate and individual income tax receipts. Also as of last month, there were 1,983,103 Kentuckians in the workforce based upon preliminary numbers for August, which is the highest number of employed Kentuckians in the history of the Commonwealth. Kentucky attracted \$9.2 billion of announced direct investment in the State in 2017, which is a record amount for any year, and approximately \$16.8 billion since Governor Bevin took office, representing the creation of almost 46,000 jobs.

There are many factors contributing to the success, including the enactment of smart and innovative legislation. However, it is the firm belief of the Governor that the implementation of the Red Tape Reduction Initiative and the exposure that it has received has contributed in large part to the growing perception that Kentucky is an attractive State in which to create and sustain good-paying jobs for its citizens.

Thank you.

[Prepared statement of Mr. Brinkman follows:]

Testimony Before the Subcommittee on Healthcare, Benefits, and Administrative Rules and the
Subcommittee on Intergovernmental Affairs of the Committee on Oversight and Government
Reform

September 27, 2018

Thank you Chairmen Jordan and Palmer, Ranking Members Krishnamoorthi and Raskin, and members of the Subcommittees for affording me this opportunity to discuss Governor Bevin's Red Tape Reduction Initiative.

Governor Bevin campaigned on the theme that it is all about jobs, which at its core means creating a more inviting environment to attract both human and financial capital. Candidate Bevin's Blueprint for a Better Kentucky listed seven action items that he would pursue if elected Governor. One of the action items was reforming state government. Although there are many aspects to reforming state government, a key component of that effort is modernizing Kentucky's administrative regulations, and one of the first undertakings of the administration was the formulation and implementation of its Red Tape Reduction Initiative. As part of this Initiative, every Cabinet and agency within the executive branch has been directed to review every regulation promulgated by it over the years and make one of the following determinations:

- Completely repeal the regulation as its original purpose is no longer relevant.
- Amend the regulation to conform it to a federal counterpart. This effort includes eliminating inconsistent definitions and standards with the goal that the state regulation should never be more burdensome than the federal counterpart unless circumstances unique to Kentucky require a stricter standard.
- Amend and modernize the regulation to make it clearer and simpler to understand by those subject to the regulation and also make it easier to update in the future.
- Combine the regulation with other regulations to include a single subject matter, such as fees or applications, in one regulation for ease of review by those subject to it.
- Leave the regulation as it is currently written.

The goal of the administration is to reduce by one-third the number of restrictions on businesses and individuals in Kentucky. In 1975, there were four volumes of regulations in effect in Kentucky. That number had grown to 14 volumes when Governor Bevin took office. As of this month, of the approximately 4,700 separate regulations on the books at the outset of the administration, over 2,700 (57%) regulations have been reviewed, 488 regulations have been repealed, 454 regulations have been amended, and 56 new regulations have been promulgated.

The Initiative has the support of business groups, trade associations, chambers of commerce and other organizations across Kentucky.

There are several lessons to be learned from Kentucky's Red Tape Reduction Initiative. First, the Governor must own the initiative in every aspect, and it helps to have a tangible symbol associated with the endeavor. In the case of Kentucky, we created the lapel pin that I am wearing today, and Governor Bevin and his top officials wear this pin every day. Further, Governor Bevin speaks out regularly regarding the importance of the Red Tape Reduction Initiative to individuals and groups throughout Kentucky. As a result of the Governor's leadership, there is growing awareness of the Initiative every day throughout the Commonwealth.

Second, it is important to create website that is interactive with the public and allows for individuals to post recommendations on the repeal or amendment of regulations. Kentucky's Red Tape Reduction Initiative website is <http://redtapereduction.com>. Kentuckians have submitted scores of thoughtful ideas on how to reduce unnecessary regulations that drive up the cost of conducting business and create inefficiencies without contributing to public health or public safety.

Finally, the effort of the Cabinets and other agencies must be sustained on a regular basis. Our Cabinets and other agencies regularly review and re-review existing regulations to ensure that the goals of the Red Tape Reduction Initiative are being met. This is a thoughtful and deliberative process that never ends.

We have also decided to digitize and modernize the manner in which our state agencies draft and promulgate regulations. To that end, Kentucky has contracted with Esper Regulatory Technologies Inc. to provide state of the art technological tools to our regulation drafters throughout the executive branch to assist them in the review of existing regulations and the promulgation of new regulations.

The Kentucky General Assembly has joined the Bevin Administration in reducing the regulatory burden on Kentucky businesses and individuals through the passage of important legislation during the last two sessions of the legislature. For example, the Kentucky General Assembly has institutionalized the continuous review of the efficacy of regulations through the passage of House Bill 50 during its 2017 session. This legislation mandates that every regulation shall expire seven years from the effective date of its promulgation unless extended by the applicable state agency. Although the process to continue the effectiveness of a regulation is simple, the legislation does require that every regulation be re-examined every seven years to determine whether it should remain in effect, should be amended, or should be repealed. House Bill 50 should have the laudatory effect of avoiding the accumulation of outdated regulations that no longer serve a useful purpose and simply clutter up the Kentucky Administrative Regulations.

In conclusion, the administration's efforts to simplify the ability of Kentuckians to conduct business are paying valuable dividends. As of last month, Kentucky's unemployment rate is 4%, which is the lowest it has been since 1976 when this statistic began to be determined, and its

workforce participation rate is trending towards 40th in the nation. Kentucky also realized during the month of April of this year the highest amount of monthly tax receipts in its history, driven largely by corporate and individual income tax receipts. Also as of last month, there were 1,980,103 Kentuckians in the workforce based upon preliminary numbers for August, which is the highest number of employed Kentuckians in the history of the Commonwealth. Kentucky attracted \$9.2 billion of announced direct investment in the state in 2017, which is a record amount for any year, and approximately \$16.8 billion since Governor Bevin took office, representing the creation of almost 46,000 jobs. There are many factors contributing to this success, including the enactment of smart and innovative legislation. Certainly, Kentucky has also benefitted from improving national and global economies. However, it is the firm belief of the Governor that the implementation of the Red Tape Reduction Initiative, and the exposure that it has received, has contributed in large part to the growing perception that Kentucky is an attractive state in which to create and sustain good paying jobs for its citizens.

Mr. PALMER. Just to inform our witnesses and the members of the committees, votes may be called between 3:15 and 3:30. It is my intent to conclude the hearing with the members who are present so that we do not have to hold you hostage while we go vote.

So with that, I will now recognize Mr. Narang for five minutes for his testimony.

STATEMENT OF AMIT NARANG

Mr. NARANG. Chairmen Palmer and Jordan, Ranking Members Krishnamoorthi and Raskin, and members of the committee, thank you for the opportunity to testify today. I am Amit Narang, regulatory policy advocate at Public Citizen's Congress Watch. Public Citizen is a national public interest organization with more than 500,000 members and supporters. For more than 40 years, we have successfully advocated for stronger health, safety, consumer protection, and other rules, as well as for a robust regulatory system that curtails corporate wrongdoing and advances the public interest.

Public health and safety regulation has been among the greatest public policy success stories in our country's history. Regulations have made our air far less polluted and our water much cleaner; they've made our food and drug safer; they've made our workplaces less dangerous; they've made our financial system more stable; they've protected consumers from unsafe products and from predatory lending practices; they've made our cars safer; they've outlawed discrimination on the basis of race, gender, and sexual orientation; and much more.

These regulations are now considered to be bedrock public protections widely popular with the public. In short, our regulatory safeguards are to be celebrated and emulated. Yet there is much more progress to be made addressing threats to the health, safety, environment, and financial security of hardworking American families.

Unfortunately, President Trump and his administration are taking the country in exactly the opposite direction, embarking on a radical and unprecedented deregulatory agenda that has led to the corporate capture of our regulatory system of public protections. One of the key drivers of this administration's attack on public protections is Executive Order 13771, the so-called two-for-one executive order that imposes a regulatory budget on agencies.

When the executive order was issued, Public Citizen, along with partner groups, challenged the order in court as unconstitutional and illegal. And this lawsuit is ongoing and pending a district court. Our lawsuit stipulates that the order exceeds the President's constitutional authority, violates his article II duty to take care that the laws are faithfully executed, and directs Federal agencies to engage in unlawful actions that harm members of the public, including members of Public Citizen.

The order places requirements on agencies that are nowhere authorized by any statute, and in fact are in direct conflict with numerous bedrock public protection laws passed by Congress, which should be of utmost concern to members of this committee and all Members of Congress. None of the laws passed by Congress direct or even permit agencies to issue regulations that protect the public

only if they can first get rid of existing regulations that protect the public and only if the new regulatory protections impose no new costs on corporations or hurt corporate profits.

The message the executive order sends to hardworking Americans and their families is this: It is more important for our government to boost corporate profits than it is for our government to ensure that Americans have the right to clean air and water, safe food, safe workplaces, civil rights protections, safe and non-toxic consumer products, including children's products, safe cars, financial protections that hold Wall Street accountable, and many more commonsense safeguards.

The executive order has now been enforced for roughly 20 months, and the results are clear: The order has blocked and delayed agencies from issuing hundreds of public protections according to official government data listed on OMB's unified regulatory agenda, while providing underwhelming cost savings to corporations of \$570 million under fiscal year 2017, which amounts to about .001 percent of GDP growth under the second quarter of this fiscal year. In other words, the cost of the executive order in terms of public protections that have been blocked significantly outweigh the minimal benefits to corporations that the order has provided with respect to cost savings.

Among the protections that the public has lost are new lead-in-drinking-water standards; new gun-control measures; new vehicle, truck, and train safety standards; dozens of new environmental protections, including restrictions on toxic chemicals under TSCA; safety standards for new tobacco products like e-cigarettes; numerous workplace safety protections; and updates to energy efficiency standards. It is likely that agencies will be unable to accumulate enough cost savings to corporations under the executive order to be able to issue important new protections that will save lives such as new auto safety technology that allows vehicle-to-vehicle communications that can potentially save thousands of lives per year.

The executive order has failed to unleash economic growth as promised by supporters of the order, at least according to Goldman Sachs. Goldman Sachs studied whether job growth and capital spending have been stronger in sectors in companies that were more highly regulated before the most recent election. According to Goldman Sachs' January 2018 report, quote, "We find no evidence that employment or capital spending accelerated more after the election in an area where regulatory burdens are higher."

In sum, the executive order has been a lose-lose for our country. It has made Americans less safe by blocking or delaying critical new regulations that protect the public, while providing underwhelming cost savings to corporations and failing to create economic growth. Public Citizen encourages this committee and Members of Congress to conduct vigorous oversight over the continuing implementation of Executive Order 13771 to ensure that Federal agencies are doing their statutorily mandated duty to protect the public by issuing new health, safety, environmental, and consumer protection regulations, as Congress intended. Public Citizen also encourages Members of Congress to be mindful of the need to explicitly exempt agencies from complying with this execu-

tive order when drafting and enacting new legislation designed to protect the public by requiring agencies to issue new regulations.

Thank you, and I look forward to your questions.

[Prepared statement of Mr. Narang follows:]

Written Testimony of

Amit Narang
Regulatory Policy Advocate, Public Citizen

before the

The House Oversight and Government Reform Committee
Subcommittee on Healthcare, Benefits, and Administrative Rules
Subcommittee on Intergovernmental Affairs

on

**“Benefits of a Deregulatory Agenda: Examples from Pioneering
Governments”**

September 27, 2018



Mr. Chairmen and Members of the Committees,

Thank you for the opportunity to testify on regulatory policy issues. I am Amit Narang, Regulatory Policy Advocate at Public Citizen. Public Citizen is a national public interest organization with more than 500,000 members and supporters. For 45 years, we have advocated with some considerable success for stronger health, safety, consumer protection and other rules, as well as for a robust regulatory system that curtails corporate wrongdoing and advances the public interest.

Public Citizen chairs the Coalition for Sensible Safeguards (CSS). CSS is an alliance of more than 75 consumer, small business, labor, scientific, research, good government, faith, community, health and environmental organizations joined in the belief that our country's system of regulatory safeguards provides a stable framework that secures our quality of life and paves the way for a sound economy that benefits us all. Time constraints prevented the Coalition from reviewing my testimony in advance, and today I speak only on behalf of Public Citizen.

Over the last century, and up to the present, regulations have made our country stronger, better, safer, cleaner, healthier and more fair and just. Regulations have made our food supply safer; saved hundreds of thousands of lives by reducing smoking rates; improved air quality, saving hundreds of thousands of lives; protected children's brain development by phasing out leaded gasoline; saved consumers billions by facilitating price-lowering generic competition for pharmaceuticals; reduced toxic emissions into the air and water; empowered disabled persons by giving them improved access to public facilities and workplace opportunities; guaranteed a minimum wage, ended child labor and established limits on the length of the work week; saved the lives of thousands of workers every year; protected the elderly and vulnerable consumers from a wide array of unfair and deceptive advertising techniques; protected minorities and vulnerable populations from harassment and discrimination based on race, gender and sexual orientation and promoted equality under the law for such populations; ensured financial system stability (at least when appropriate rules were in place and enforced); made toys safer; saved tens of thousands of lives by making our cars safer; and much, much more.

In short, regulation is one of the greatest public policy success stories in terms of benefits to the public and is a testament to the power of Congress in protecting the public through passage of critical, foundational laws such as the Clean Air Act, the Clean Water Act, the Occupational Safety and Health Act, the Consumer Product Safety Act, the Civil Rights Act, various food safety laws, and many more. Strong and effective public health and safety regulations are a reflection of Congress' desire to protect everyday Americans through laws that are still among the most popular and cherished by the public.

Unfortunately, this Administration has sought to roll back regulatory safeguards in radical and unprecedented fashion. The centerpiece and primary impetus of the Administration's

deregulatory agenda is the issuance of Executive Order 13771 (EO 13771) on January 30, 2017.¹ EO 13771, however, exceeds the President's constitutional authority, violates his Article 2 duty to take care that the laws are faithfully executed, and directs federal agencies to engage in unlawful actions that harm members of the public, including members of Public Citizen. The requirements EO 13771 place on agencies are nowhere authorized by any statute, and in fact are in direct conflict with numerous laws passed by Congress which should be of utmost concern to members of Congress.

Indeed, EO 13771 is best viewed as a "supermandate" on Executive Branch agencies that essentially changes the numerous laws passed by Congress which were intended to protect the public by authorizing, and in many cases mandating, agencies to issue health, safety, environmental, and consumer protection regulations. None of these bedrock public protection laws incorporate the elements of EO 13771, namely the requirement to issue more deregulatory actions than regulatory actions, and the requirement that prevents agencies from issuing new regulations unless the costs of those regulations to corporate stakeholders is offset by the repeal of deregulatory actions that provide an equal amount of cost savings to corporate stakeholders. In short, EO 13771 flies in the face of congressional intent with respect to dozens of laws that Congress passed with the clear goal of protecting the public through issuance of new regulations.

President Trump's deregulatory agenda has resulted in an unprecedented corporate capture of our regulatory agencies and rulemaking process. While much of the attention has justifiably focused on the personnel that have been brought in through the "revolving door" to direct the deregulatory agenda at these agencies, despite many having clear conflicts of interest due to previous work on behalf of corporations, EO 13771 has significantly contributed to the corporate capture of our country's system of public protections. EO 13771 systematically reorients agencies away from the mission Congress set out for them to protect the public and towards a new deregulatory mission that requires agencies to issue more deregulatory actions than regulatory actions and to protect the public only to the point where no new costs are imposed on corporate stakeholders and no further. EO 13771 places pressure on agencies to ensure that any regulatory protections the agency seeks to adopt must be fashioned in a way that minimizes costs in order to comply with regulatory budgets adopted under the EO, rather than in a way that maximizes the effectiveness and benefits of the regulatory protection to the public. In other words, EO 13771 makes costs to corporations, not benefits to Americans and working families, the dispositive factor in agencies' regulatory or deregulatory decision-making.

The message EO 13771 sends to the public is this: it is more important for our government to boost corporate profits than it is for our government to ensure that Americans have the right to clean air and water, safe food, safe workplaces, civil rights protections, safe and non-toxic consumer products including children's products, safe cars, financial protections that hold Wall

¹ Shortly thereafter, Public Citizen along with partner organizations sued the Administration to challenge EO 13771 on the basis that EO 13771 is unconstitutional and illegal.

Street accountable, and many more sensible safeguards. Agencies have already identified hundreds of crucial public protections as subject to EO 13771 and, thus, that cannot be implemented unless their costs are offset by eliminating two or more existing regulations. Among those are new lead in drinking water standards, new gun control measures, new vehicle, truck, and train safety standards, dozens of new environmental protections including restrictions on toxic chemicals, safety standards for new tobacco products like e-cigarettes, numerous workplace safety protections, and updates to energy efficiency standards.

President Trump has justified his deregulatory agenda as a means to create economic growth. After almost two years, the evidence is clear that there has been no such economic growth due to deregulation. Both GDP and jobs figures show that there has been no greater economic growth under this Administration than there was under the last Administration.² Goldman Sachs issued a report in January of 2018 that undermines any claims that deregulation under the Trump administration has led to job or economic growth. Goldman Sachs studied whether job growth and capital spending have been stronger in sectors and companies that were more highly regulated before the most recent election. According to Goldman Sachs, “[W]e find no evidence that employment or capital spending accelerated more after the election in areas where regulatory burdens are higher.”³

Further, a groundbreaking new study from a libertarian economist at George Mason’s Mercatus Center provides strong evidence that regulations have no impact on innovation in the marketplace or on the growth of startup businesses.⁴ Professor Alex Tabarrok set out to study the impact of regulation on innovation with the expectation that he would find industry sectors that were more heavily regulated had lower rates of innovation and startup growth than industry sectors that were not as heavily regulated. In order to determine the level of regulation in a particular industry sector, Professor Tabarrok used data assembled by the Mercatus Center which notes the number of instances where regulations impose mandatory requirements on the public by searching the Code of Federal Regulations for keywords “shall” or “must.” Professor Tabarrok found that there was *no correlation* between industry sectors that had more regulatory obligations and lower rates of startup growth or innovation in those sectors according to the Mercatus Center data. Instead, Professor Tabarrok found that while innovation is certainly declining in this country, the decline is consistent and fairly uniform across industry sectors, whether or not they are heavily regulated. This research should put to bed any claims about regulation harming innovation or startups in this country.

² https://www.washingtonpost.com/blogs/right-turn/wp/2018/02/13/president-trumps-deregulation-flop/?utm_term=.a97ce3cff3ae

³ <http://www.aei.org/publication/whats-been-the-economic-impact-of-trumps-deregulation-push/>

⁴ <https://washingtonmonthly.com/magazine/april-may-june-2018/null-hypothesis/>

The Basics of EO 13771

President Trump's Executive Order on regulations, 13771,⁵ is a key driver of deregulatory activity at all agencies. EO 13771 can be broken down into three component parts that place restrictions on agencies subject to the EO, all three of which are inter-related. First, the EO requires agencies to identify and eliminate a minimum of two existing regulations that impose costs on corporate stakeholders in order for that agency to promulgate a new regulation that imposes costs on corporate stakeholders. Second, and more consequentially, the EO imposes a "regulatory budget" which requires that agencies fully offset the costs to corporate stakeholders of any new regulations promulgated by an agency by providing equal cost savings to corporate stakeholders due to the repeal of existing regulations. Finally, the EO imposes an annual regulatory cap on incremental regulatory costs to be determined on an agency by agency basis and subject to approval by the Office of Management and Budget (OMB).

EO 13771 attempts to impose a simple framework on a highly complex rulemaking process across agencies despite the fact that federal agencies often have regulatory missions prescribed by statute that are drastically different. This includes rulemaking requirements that are specific to some agencies but not others and analytical requirements that reflect differences in how agencies value the costs and benefits of their rules, including for example stark differences in the monetary values agencies attach to lives saved by a regulation as well as other benefits to the public that a regulation provides. Thus, following the issuance of EO 13771, OMB put out guidance⁶ which made several important clarifications and refinements regarding the terms and application of the EO in order to aid agency compliance with the EO. The guidance stipulates that the EO does not apply to all regulatory actions, but only to "significant regulatory actions" and "significant guidance documents" which are defined as having an annual effect on the economy of \$100 million or more. In contrast, deregulatory actions can include any action that provides cost savings, and not just those that are deemed to be "significant." This results in an "apples to oranges" comparison where agencies are able to claim far more deregulatory actions than regulatory actions for purposes of satisfying the first prong of the EO requiring a minimum of two deregulatory actions to offset a regulatory action.

The Deregulatory Results of EO 13771 Are Underwhelming

So far, OMB has reported metrics on implementation of EO 13771 for fiscal year 2017 (FY17) and has projected cost caps for agencies for fiscal year 2018 (FY18) which is about to close. For FY17, OMB reported that agencies issued 67 deregulatory actions as compared to 3 regulatory actions under EO 13771, thus claiming a 22 to 1 ratio of deregulatory actions to regulatory actions. Yet, these numbers are highly misleading due to the "apples to oranges" comparison described above. Indeed, many of the 67 actions claimed to be deregulatory are minor in nature,

⁵ <https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs>

⁶ <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-21-OMB.pdf>

and include repeals of non-binding guidance documents that do not, as a technical or legal matter, impose costs on corporate stakeholders.⁷

Thus it is not surprising that with respect to cost savings under EO 13771 for FY17, the results have been underwhelming. OMB projected approximately \$570 million in annual cost savings for FY17. To put that in context, the most recent Gross Domestic Product (GDP) figures from the government indicate an increase in GDP of roughly \$371 billion for the second quarter of FY18.⁸ Thus the annual costs savings under EO 13771 for FY17 equates to about .001% of the GDP growth in the most recent quarter of this fiscal year. This is certainly a drop in the bucket and a very small one at that. For FY18, OMB has projected a slight increase in cost savings of \$687 million per year under EO 13771.⁹ This is likely due to OMB forcing agencies to propose negative cost caps for FY18, meaning that many agencies will not only have to offset the cost of new rules with cost savings from eliminating old rules, but must go further and meet “negative” cost cap goals by cutting existing regulations to provide cost savings on top of those necessary to offset new regulations.

EO 13771 Requires Agencies to Ignore the Benefits of Regulations

EO 13771 has led to a wholesale change in how agencies weigh the costs and benefits of the regulations they promulgate by restricting agencies from considering how regulations benefit the public when analyzing the impacts of their regulations. In essence, EO 13771 has turned cost-benefit analysis into “cost-cost” analysis where the benefits of protecting the public play virtually no meaningful role in regulatory analysis and agencies will instead solely focus on the costs to corporate stakeholders when deciding whether to issue new regulations and how they will be fashioned.

It is true that this Administration has not officially repealed EO 12866 which requires agencies to assess the costs and the benefits of the most important and beneficial regulations they promulgate. Yet, it is impossible to reconcile the goal of EO 12866, which is to maximize a regulation’s net benefits to the public, with the goal of EO 13771, which is to minimize the costs of regulations to corporate stakeholders.

Indeed, maximizing net benefits will have no place in the EO 13771’s regulatory budget model. By default, agencies will have a strong incentive to pick the rule that is least costly to corporate stakeholders in order to meet budget caps, even if the benefits of a slightly more costly rule would be substantially greater, thus increasing the total net benefits of the rule. The “cost-benefit” regulatory model that maximizes the public benefits of rules has turned into the “least costly to business” regulatory budget.

⁷ The full list of deregulatory and regulatory actions for FY17 can be found here:
https://www.reginfo.gov/public/pdf/eo13771/FINAL_BU_20171207.pdf

⁸ <https://www.bea.gov/data/gdp/gross-domestic-product>

⁹ https://www.reginfo.gov/public/pdf/eo13771/FINAL_TOPLINE_ALLOWANCES_20171207.pdf

To be clear, Public Citizen is not enthusiastic¹⁰ about cost-benefit analysis in the first place. It is based on inherently flawed methodology, and it plays an outsized and often dispositive role in agency decision-making. The methodology relies on subjective assumptions that tend to inflate cost figures and undercount the benefits.

For example, cost-benefit calculations do not account for dynamic and innovative responses¹¹ by industry to new regulations that lower compliance costs. In addition, many of the benefits of regulation—such as saving lives, reducing lead exposure, and preventing oil train derailments and explosions, to name just a few—are difficult or impossible to quantify in monetary terms.

Compounding this problem is the fact that cost-benefit analysis has become a test that agencies must meet before issuing regulations—even when Congress has set a mandatory deadline for a rule or has given the agency very little discretion in how to fashion the regulation.

Cost-benefit analysis is far more art than science and confers a false illusion of objectivity. It should never be the basis for rejecting a proposed regulation—especially one required by law. It has been a constant obstacle for public interest groups like Public Citizen that are pushing for stronger regulations aimed at enforcing our laws and protecting the public. If agencies must conduct cost-benefit analysis, the goal should be to maximize the net benefits.

As will be discussed later in the testimony, EO 13771 has already blocked agencies from issuing common-sense health, safety, environmental, and consumer protection regulations due to the inability to offset the costs of those regulations under EO 13771 despite the fact that these regulations will bring enormous benefits, ranging from tens to hundreds of billions of dollars per year, to Americans and working families. In short, EO 13771 is forcing agencies to ignore the benefits of health, safety, environmental, and consumer protection regulation to the public.

The Lost Benefits of President Trump’s Deregulatory Agenda due to EO 13771

While EO 13771 has tied agency hands from considering the benefits that everyday Americans will lose due to the Trump Administration’s radical deregulatory agenda, both official government figures issued under this Administration, along with a new report that Public Citizen released yesterday entitled “Ignored Benefits” make clear that the regulatory budget model under EO 13771 is leading to the loss of hundreds of billions to trillions of dollars in regulatory benefits that would have accrued to the public.

A. Office of Management and Budget Report to Congress on the Costs and Benefits of Federal Regulations

Federal health, safety, and environmental regulations are one of the best investments that our government can make according to cost-benefit figures compiled by OMB on a yearly basis and

¹⁰ <https://judiciary.house.gov/wp-content/uploads/2016/05/HHRG-114-JU00-Wstate-NarangA-20160524.pdf>

¹¹ <https://www.citizen.org/our-work/government-reform/regulation-unsung-hero-american-innovation>

submitted to Congress under the “Regulatory Right to Know Act.” The report details the costs and benefits of those rules where agencies were able to fully monetize costs and benefits over the preceding ten fiscal years. Every year the report has been issued by OMB, the report has shown that the public health, safety, environmental, and consumer protection benefits of the regulations issued that fiscal year have substantially exceeded the costs to corporations.¹²

The OMB draft report for 2017,¹³ which covers rules issued in fiscal year 2016, once again found benefits of those rules dramatically exceeding the costs. The draft report showed that rules with monetized costs and benefits issued under President Obama’s last year in office provided the public with 6 dollars of benefits for every one dollar in compliance costs for regulated entities. This is a rate of return on investment that more than fully justifies any compliance costs associated with health, safety, environmental, and consumer protection regulations.

According to the 2017 draft report, the benefits of regulations issued by the government over the past ten years have massively outweighed the costs, with benefits ranging from \$287 to \$911 billion as compared to costs of \$78 and \$115 billion. This report illustrates just how costly EO 13777 would have been to our country if it had been in place over the last ten years. In other words, if a regulatory budget had been in place, agencies would have been prevented from providing the public with up to \$911 billion in regulatory benefits in order to avoid imposing costs on corporations of up to \$115 billion. This kind of budget would make no economic sense for any private business owner and, likewise, it makes no economic sense for our government either.

The Committee should note that this year’s draft report missed the deadline for submission to Congress by approximately two months. While the report was supposed to be submitted to Congress, at least in draft form, by the end of the calendar year 2017, OMB ended up submitting the report at the end of February 2018. In addition, OMB released the report late on a Friday evening and without any accompanying statement or press release that would draw attention to the report. Public Citizen believes the report provides important information to the public and should be disseminated in a way that maximizes accessibility and awareness by the public.

Additionally, criticism of the report as being too narrow in scope is misleading and misplaced. While the report indicates that agencies have issued 36,225 federal rules over the last ten years, the vast majority of these rules are minor and technical in nature and relate to actions such as agency publishing of timetables to open drawbridges or schedules for cutting trees at airport runways. These actions rarely undergo economic analysis much less public notice and comment. Of the subset of most important rules that do undergo cost-benefit analysis, the most recent report indicates that only 4 of the 81 major rules covered by the report had no cost or benefit analysis to accompany the rules. As stated before, OMB’s report is pursuant to the Regulatory

¹² <https://www.whitehouse.gov/omb/information-regulatory-affairs/reports/>

¹³ https://www.whitehouse.gov/wp-content/uploads/2017/12/draft_2017_cost_benefit_report.pdf

Right to Know Act so any criticism of the scope of the report's coverage should be directed at the underlying statute, not OMB.

B. Public Citizen's Report Finds 2 Trillion in Lost Benefits Due To Deregulatory Agenda

Yesterday, Public Citizen released a report, attached in full at the end of this testimony, which reviews the most important health, safety, environmental, and consumer regulations that are currently being repealed or weakened by the Trump Administration. The report examines 13 rules that the Trump Administration has repealed, delayed, or targeted for repeal, and finds that these rules would provide the public with over \$2 trillion in regulatory benefits over the next two decades if they were allowed to be kept in place. This breaks down to about \$16,700 per every household over the next two decades and far outweighs any cost savings to corporations over the same period.

The rules examined in the report cover the spectrum of regulations that benefit the public, from bedrock safety regulations that combat air pollution and climate change to regulations that put money back in the pocketbook of working Americans by updating outdated overtime pay thresholds to ensuring that investment brokers are acting in the best interest of their clients and not themselves. The report did not include important and beneficial regulations such as the Clean Power Plan or the Mercury and Air Toxics regulation even though the Trump Administration has targeted both for potential repeal or weakening. In both cases, corporate stakeholders had sunk costs into complying with the rule, thereby realizing the benefits of the rule, or the rule has not been allowed to go into effect pending a legal challenge and thus the benefits of the rule have not yet kicked in. Thus, our estimate of the lost benefits is best viewed as a conservative estimate.

Hundreds of Public Protections Are Being Blocked or Delayed by EO 13771

EO 13771 is already having significant and harmful real world impacts by blocking or delaying hundreds of new regulatory protections that directly protect and benefit hardworking Americans and their families. A review of the most recent Unified Regulatory Agenda, issued this past Spring, fully confirms this fact.

Before turning to the data, a brief explanation of the Unified Agenda may be helpful. The agenda is published twice a year by OMB, in the spring and in the fall traditionally, and lists all agencies upcoming rulemakings along with anticipated dates for the next action agencies will take on those rulemakings. It also lists rules that agencies have completed since the publication of the last Unified Agenda and lists rules that agencies consider to be "long-term actions" meaning that agencies do not anticipate taking any action on those rules in the near future. Thus, the Unified Agenda gives the public a snapshot of which rules agencies are working on, and those which agencies have either completed work on or do not anticipate working on in the near future. After EO 13771 was issued, agencies have begun listing their regulatory actions as either "regulatory," "deregulatory," or "other" for purposes of classifying rules under EO 13771. As the titles

indicate, “regulatory” actions are those where the costs must be offset, “deregulatory” actions are those that could provide cost savings to offset “regulatory” actions, and “other” means the action is not subject to EO 13771.

According to the Spring 2018 Unified Agenda, of the actions that agencies are currently working on, 133 are listed as regulatory and thus must be offset by deregulatory actions that provide cost savings equal to the cost of the regulatory action. By contrast, 498 actions that agencies are currently working on are listed as deregulatory. In other words, agencies are currently working on roughly four times the number of deregulatory actions as regulatory actions, reinforcing that EO 13771 has systematically bent our agencies in favor of deregulation.

The Spring Agenda also shows a clear link between actions classified as regulatory under EO 13771 and actions that agencies have blocked or delayed by classifying them as long term actions. Specifically, there are 87 regulatory actions that have been classified as both regulatory and long term on the Spring Agenda. In other words, about 40 percent of all rules classified as regulatory on the Spring Agenda will not be issued or acted upon by agencies in the near future and thus should be considered to have been blocked or delayed. This data makes clear that there is a strong correlation between rules that are identified as regulatory and thus must be offset under EO 13771, and rules that that agencies have blocked or delayed by virtue of being identified as “long term” actions. In short, agencies are blocking or delaying rules that benefit the public due to EO 13771.

By contrast, even though significantly more rules are classified as deregulatory under EO 13771, far fewer have been delayed or blocked by being classified as long term by agencies. According to the Spring Agenda, only 32 rules deemed as deregulatory were classified as long term actions. Further, agencies are completing deregulatory rules at a far faster clip than regulatory rules. Of the completed actions on the Spring Agenda, about 80 actions were deemed deregulatory whereas only 14 completed actions were deemed regulatory. This means that agencies are completing deregulatory actions at almost six times the rate as regulatory actions.

An Illustration of How Important New Protections Are Being Blocked by EO 13771

The numbers from the most recent Unified Agenda certainly make clear that EO 13771 is forcing agencies to block or delay new regulations that protect the public. Yet, this should not be surprising given how the regulatory budget component of EO 13771 is supposed to operate. In order to illustrate how EO 13771 places agencies that are supposed to protect the public in an “arithmetic straightjacket” which prevents them from issuing regulations that protect the public, it is useful to consider the real world example of an auto safety regulation that would save over a thousand lives a year by introducing revolutionary safety technology into the marketplace, but is being blocked by EO 13771.

In January of 2017, The Department of Transportation’s National Highway Traffic Safety Administration (NHTSA) proposed an auto safety rule called Vehicle to Vehicle

Communications (V2V Rule)¹⁴ that would require automakers to adopt new technology that avoids crashes and traffic fatalities by allowing cars to send basic safety messages to other cars in order to avert accidents. NHTSA claimed when it proposed the rule that V2V technology “has the potential to revolutionize motor vehicle safety ...and to reduce the number and severity of motor vehicle crashes.”¹⁵ NHTSA projected in the proposed rule that it would prevent 424,901-594,569 crashes a year and save between 955 and 1,321 lives a year when fully adopted by automakers. NHTSA estimated those lives saved and crashed avoided would result in benefits of \$54.7 billion to \$73.9 billion annually while costing \$2.2 billion to \$5 billion per year.¹⁶

It will be virtually impossible for NHTSA to finalize the V2V rule while complying with EO 13771. The reason is simple: there are simply not enough cost savings from deregulatory actions to offset the costs of the V2V rule, despite the enormous benefits the rule would provide to our country. As noted above, the sum of the annual cost savings generated by all deregulatory actions across all agencies during FY17 resulted in only \$570 million in cost savings. Comparing the estimated costs of the V2V rule, \$2.2 billion to \$5 billion, with the costs savings from FY17 suggests that it will take two to three years to accumulate deregulatory cost savings *across the whole government* that are sufficient to offset even the most conservative estimated cost of *just this one* V2V rule.

Making matters worse, EO 13771 generally restricts agencies from using cost offsets that originate from other agencies, meaning that NHTSA would need to offset the costs of the V2V rule with cost savings that come from deregulatory actions taken by the Department of Transportation alone. In FY17, the Department generated cost savings of just \$21.8 million. At this rate, the Department would need *seven decades* to accumulate the necessary cost savings to offset just this one V2V rule. As this example illustrates, EO 13771 is blocking agencies from issuing regulations that provide enormous benefits to the public which massively outweigh the costs of the regulation to corporate stakeholders, making clear that the regulatory budget model is preventing agencies from protecting the public and will continue to do so.

Examples of Protections that Are Being Blocked and Delayed by EO 13771

As noted above, there are currently 220 regulations that have been classified as regulatory on the most recent Unified Agenda. Those regulations include common-sense health, safety, environmental, and consumer protection regulations from across government agencies. Examples of the public protections that are being blocked and delayed by EO 13771 include:

- Updates to outdated lead exposure standards:
 - Lead in Drinking Water Rule (2040-AF15)¹⁷

¹⁴ 82 Fed. Reg. 3854 (Jan 12, 2017)

¹⁵ *Id.* At 3855

¹⁶ *Id.* At 3981

¹⁷ Regulatory Identification Numbers (RINs) in Parentheses

- Lead in Paint and Residential Dust Rule (2070-AJ82)
 - Lead Standards for Renovation and Repair of Commercial Buildings (2070-AJ56)
- Protections from Toxic Chemicals under TSCA:
 - Paint Stripper (Methylene Chloride) Rule (2070-AK07)
 - Tricchloroethylene (TCE) Rules (2070-AK03, 2070-AK11)
- Worker Safety Protections:
 - Exposure To Infectious Diseases Rule (1218-AC46)
 - Prevention of Workplace Violence in Health Care Facilities (1218-AD08)
 - Injury and Illness Recordkeeping and Reporting Rule (1218-AC45)
- Mine Worker Safety Rules:
 - Proximity Detection Systems for Mobile Machines (1219-AB78)
 - Exposure of Underground Miners to Diesel Exhaust (1219-AB86)
- Energy Efficiency Standards and Updates
 - Efficiency Standards for Residential Conventional Cooking Products (1904-AD15)
 - Efficiency Standards for Gas Furnaces (1904-AD20)
- Airline Baggage Fees:
 - Transparency of Airline Baggage and Other Fees (Withdrawn) (2105-AE56)
- Auto Safety Protections:
 - Vehicle to Vehicle Communication (2127-AL55)
 - Heavy Vehicle (Trucks) Speed Limiter Rule (2126-AB63)
 - Rear Seat Belt Reminder System (2127-AL37)
 - Child Passenger Safety Protections (2127-AL20, 2127-AL34)
- Anti-Smoking Protections for Children:
 - Nicotine Exposure Warnings and Child Resistant Packaging for Liquid Nicotine (0910-AH24)
- Gun Safety Protections
 - Bump Stock Device Rule (1140-AA52)

Regulatory Budget Models from Other Countries Have Harmed the Public

When other countries have experimented with regulatory budget models similar to EO 13771, the results have ranged from underwhelming to downright dangerous. For example, the U.K. instituted a “one-in, one-out” regulatory budget which has evolved to a “one-in, three-out” regulatory budget that requires the removal of three existing regulations before a new regulation can be put in place. UK safety officials have pointed to the regulatory budget as playing a key role leading to the tragic Grenfell Tower fire in London last year.¹⁸ Fire safety officials have

¹⁸ <https://www.nytimes.com/2017/06/22/opinion/london-fire-grenfell-tower.html>

claimed that new regulations to require retrofitting of buildings to install fire sprinklers were not put in place due to the requirement to offset those fire safety regulations with three deregulatory actions.

Canada has also instituted a version of the regulatory budget, although it only applies to “administrative burdens,” which are best equated in our country to paperwork burdens stemming from regulatory compliance, rather than the underlying regulatory requirements as is the case with EO 13771. The most recent cost savings reported by Canada due to the regulatory budget are far from substantial. In fiscal year 2017, Canada’s regulatory budget resulted in administrative burden reductions of \$455,692.¹⁹

Conclusion

Public Citizen encourages this committee and members of Congress to conduct vigorous oversight over the continuing implementation of EO 13771 to ensure that federal agencies are continuing to protect the public through issuance of new health, safety, environmental, and consumer protection regulations as Congress intended. As this testimony demonstrates, EO 13771 is frustrating the agencies from performing their congressionally mandated missions to protect the public. Public Citizen also encourages members of Congress to be mindful of the need to explicitly exempt agencies from complying with EO 13771 when drafting and enacting new legislation designed to protect the public by requiring agencies to issue new regulations. New legislation that seeks to protect the public is likely to be subject to EO 13771 unless Congress makes clear that agencies are exempt from compliance with EO 13771.

¹⁹ <https://www.canada.ca/en/treasury-board-secretariat/corporate/reports/annual-report-parliament-2016-2017-fiscal-year-implementation-one-for-one-rule.html#s5>

Appendix A

Ignored Benefits: Trump Nixing \$2.1 Trillion in Benefits Via Regulatory Cuts

Trump's Anti-Regulation Zealots Ignore Benefits of Health, Safety, Worker, Consumer and Environmental Protections

By Alan Zibel, Research Director, Public Citizen's Corporate Presidency Project²⁰

September 26, 2018 -- The Trump administration wants to deprive Americans of more than \$2.1 trillion in benefits to American consumers, workers and the U.S. economy over the next two decades by enacting reckless deregulatory rollbacks, a Public Citizen analysis finds. If Trump achieves this misguided goal, the potential loss would amount to about \$16,700 per household, far exceed any cost savings for businesses. The research highlights how Trump's crusade against regulations is the product of special-interest lobbying rather than a serious effort to promote economic growth.

Cost-benefit analysis has been part of federal rulemaking since the 1980s. Under an order signed by President Reagan in 1981, federal agencies must analyze whether the potential societal benefits of regulations outweigh the potential costs. This sort of analysis is routinely used by business groups to derail life-saving regulations despite valid concerns about the difficulty of assigning dollar values to hard-to-quantify benefits such as clean air and human life. But federal agencies have devoted exhaustive study in recent years demonstrating the economic benefits of those rules.

Public Citizen's examination of 13 rules repealed, delayed or targeted for repeal by the Trump administration found that more than \$105 billion in benefits, on average, will be lost every year from 2020 through 2040 if the Trump administration erases these rules or enacts toothless replacements. These at-risk benefits which would cost each household about \$836 per year, vastly exceeding the rules' average annual costs of nearly \$21 billion. The benefits are also far higher than the administration's claimed savings of at least \$570 million per year through regulatory rollbacks.

Public Citizen's analysis primarily uses economic cost-benefit numbers developed when these rules were proposed or enacted during the Obama administration rather than misleading numbers published by the Trump administration to justify their repeal. In some cases, as noted in Table 3, we use numbers from expert sources that calculate the benefit to consumers or workers, rather than to the entire economy.

²⁰ This report was completed with assistance from Public Citizen Regulatory Policy Advocate Amit Narang, with editing from Public Citizen President Robert Weissman as well as Public Citizen Research Director Taylor Lincoln. Dan Becker of the Safe Climate Campaign, Dave Cooke of Union of Concerned Scientists, Lauren Urbanek and John Walke of Natural Resources Defense Council and Andrew deLaski of the Appliance Standards Awareness Project provided input.

Table 1: Benefits of Targeted or Eliminated Rules, 2020-2040 (\$ Billions)

| Rule | Agency | Annual Benefit (Low) | Annual Benefit (High) | Average Yearly Benefit |
|--------------------------------------|-----------|----------------------|-----------------------|------------------------|
| Clean Car Standards | EPA/NHTSA | \$8.55 | \$119.40 | \$63.98 |
| Fiduciary | Labor | \$17.00 | \$17.00 | \$17.00 |
| Glider ¹ truck pollution* | EPA | \$6.00 | \$14.00 | \$10.00 |
| Energy efficient light bulbs | Energy | \$3.60 | \$14.20 | \$8.90 |
| Ozone | EPA | \$1.50 | \$3.50 | \$2.50 |
| Overtime | Labor | \$1.20 | \$1.20 | \$1.20 |
| Methane | EPA | \$0.50 | \$0.60 | \$0.55 |
| Battery backup efficiency | Energy | \$0.26 | \$0.46 | \$0.36 |
| Public lands methane | Interior | \$0.21 | \$0.40 | \$0.31 |
| Air conditioner efficiency | Energy | \$0.21 | \$0.33 | \$0.27 |
| Packaged Boiler efficiency | Energy | \$0.09 | \$0.30 | \$0.20 |
| Oil rig safety | Interior | \$0.16 | \$0.16 | \$0.16 |
| Air compressor efficiency | Energy | \$0.03 | \$0.07 | \$0.05 |
| TOTALS | | \$39.31 | \$171.63 | \$105.47 |

Table 2: Costs of Targeted or Eliminated Rules, 2020-2040 (\$ Billions)

| Rule | Agency | Annual Cost (Low) | Annual Cost (High) | Average Yearly Cost |
|--------------------------------------|-----------|-------------------|--------------------|---------------------|
| Clean Car Standards | EPA/NHTSA | \$9.19 | \$22.60 | \$15.90 |
| Fiduciary | Labor | \$1.00 | \$3.20 | \$2.10 |
| Glider ¹ truck pollution* | EPA | n/a | n/a | n/a |
| Energy efficient light bulbs | Energy | \$0.00 | \$1.80 | \$0.90 |
| Ozone | EPA | \$0.70 | \$0.70 | \$0.70 |
| Methane | EPA | \$0.40 | \$0.50 | \$0.45 |
| Overtime | Labor | \$0.30 | \$0.30 | \$0.30 |
| Public lands methane | Interior | \$0.11 | \$0.28 | \$0.19 |
| Battery backup efficiency | Energy | \$0.12 | \$0.16 | \$0.14 |
| Oil rig safety | Interior | \$0.09 | \$0.10 | \$0.10 |
| Air conditioner efficiency | Energy | \$0.05 | \$0.06 | \$0.06 |
| Packaged Boiler efficiency | Energy | \$0.03 | \$0.04 | \$0.04 |
| Air compressor efficiency | Energy | \$0.01 | \$0.01 | \$0.01 |
| TOTALS | | \$11.99 | \$29.70 | \$20.83 |

*Note: Acting EPA Administrator Andrew Wheeler has reversed the Trump's administration's decision to not enforce this truck-engine rule but still may go ahead with a rollback. The EPA has estimated benefits, but not costs, for this glider truck regulation, which is a piece of a broader rulemaking on truck emissions.

Public Citizen's analysis excludes some important rules. For example, it does not include the impact of replacing Obama-era rules regulating carbon dioxide emissions from power plants. Though that rule was initially expected to bring large economic benefits, many of those benefits have been achieved far earlier than expected as inexpensive natural gas forces the retirement of coal power plants. Additionally, the Obama-era carbon rules were not allowed to go into effect due to an unfavorable Supreme Court decision. Furthermore, Public Citizen's analysis also does not include the rollback of a rule curtailing mercury pollution from power plants, as power plant owners have already made the necessary upgrades to implement the rule, and several states might still require the use of such equipment. If we had included the benefits from those rules, our \$2.1 trillion lost benefit figure would be far higher.

Under an executive order signed by President Clinton in 1993 and a similar order signed by President Obama, federal regulators almost always proceed only with new regulations when monetized benefits outweigh the costs. This kind of calculation tends to overstate the costs of rules, primarily based on information provided by industry, and underestimate benefits. Often missing from these calculations are benefits such as privacy, averted pain and suffering, democracy, equality and fairness. Often, the benefits of new regulations are immense, such as efforts to mitigate global climate change, and far greater than just those benefits that agencies can calculate. In many cases, particularly for pollution and energy efficiency standards, the economic benefits of regulation often dramatically exceed the costs.

A case in point is Trump's recent proposal to roll back automotive fuel economy and greenhouse gas standards. Despite objections from career EPA career officials, the administration implausibly claimed that the rollback would result in increased safety as consumers would be more likely to buy new cars without the added cost of fuel economy technology. In fact, improved fuel economy can motivate consumers to buy newer car models. Meanwhile, an analysis by Trump's own EPA backs up this point, acknowledging that the Trump rollback plan would increase emissions of air pollutants both from vehicle tailpipes and from fuel refining at a societal cost of \$800 million to \$1.2 billion through 2026. Meanwhile, one analysis finds that freezing federal vehicle standards at 2020 levels would boost consumer spending on gasoline by \$20 billion in 2025, lead to 60,000 fewer jobs and an \$8 billion decline in gross domestic product in 2025.

Still, the Trump administration as well as corporate-allied critics, focus obsessively and exclusively on regulatory costs without acknowledging or taking into account regulatory benefits. One of the Trump administration's early actions was an executive order that conveniently ignored the "benefit" side of the cost-benefit equation by directing federal agencies to repeal at least two federal regulations for every new rule they issue. (Public Citizen is suing the Trump administration over the legality and constitutionality of the deregulatory executive order) This sort of approach would be better described as cost-cost analysis. In the Trump administration's view, regulatory benefits are not even part of the picture.

The Trump administration also has put key rules on ice despite the considerable net benefits. For example, the administration has refused to publish in the Federal Register four beneficial energy

efficiency rules, and even appealed a federal judge's ruling that it must do so. Trump officials have also worked to undermine the regulatory process, particularly by cooking the books and lowering or eliminating consideration of benefits that are lost when rules are repealed.

When trying to repeal rules its industry allies dislike, the Trump administration often employs logic that is sloppy at best. For example, under former EPA Administrator Scott Pruitt, the agency last year proposed to repeal pollution requirements for super-polluting diesel freight trucks created by dropping old engines into new truck bodies. This "glider truck" proposal was virtually devoid of any evidence or analysis of why the repeal was necessary, ignoring the agency's legal responsibility to demonstrate its rules are the product of reasoned decision-making based on sound science and economics. Given that a glider truck can emit up to 450 times the particulate matter and up 43 times the nitrous oxide of new trucks, these issues deserve a serious, professional review. The repeal would cost Americans \$6 billion to \$14 billion in benefits every single year. More recently, the EPA's acting administrator, Andrew Wheeler, has backed down on Pruitt's plan to not enforce the glider rule but still appears likely to proceed with a repeal.

The Trump administration has even failed to consider the possibility that federal rules may benefit the public. In a proposal to roll back offshore drilling safety standards, the Interior Department neglected to mention any benefit to society that would be forgone if the rule were to be repealed. The benefits, including natural resource damage, personal injuries, the cost of spill containment and impact to commercial fishing, could add up to \$163 million per year, according to government calculations. Yet, the Interior Department only calculated the safety rule's costs to oil and gas companies. As Sen. Bill Nelson (D-Fla.) wrote in a letter to the Interior Department, the proposal "places its entire justification on oil company profits and completely ignores potential economic costs to the lives and safety" of oil industry workers and coastal communities.

Trump officials also are undermining efforts to incorporate forecasts of the economic damage caused by climate change into government rule-writing. The Obama administration calculated that, based on the global damages from climate change, each ton of carbon emissions would cost the world economy \$54 in 2030. But the Trump administration lowered this figure to \$7 a ton, a move that artificially diminishes the climate change impact of the administration's deregulatory agenda.

In a similar vein, the EPA has proposed eliminating ancillary benefits, known as co-benefits, from its cost-benefit calculations. For example, power plant regulations intended to reduce mercury levels in the air can also have the extra benefit of curbing soot in the air. And rules designed to lower carbon emissions also reduce other kinds of pollution. Just as the Trump administration wishes to study the impact of regulatory changes on employers and jobs, it should take the impacts on public health just as seriously.

Although pro-corporate think tanks and analysts have developed a cottage industry of generating fanciful estimates of the cost of regulation, overall costs are not consequential compared with the size of the U.S. economy. Thus, analysts at Goldman Sachs studied whether job growth and capital spending have been stronger in sectors and companies that were more highly regulated before the most recent election and found "no evidence that employment or capital spending accelerated more

after the election in areas where regulatory burdens are higher.” They found the results “not surprising,” partly because “the estimated costs of regulation are not that high.” Relatedly, a study by a libertarian economist at George Mason University found no correlation between increased federal regulation and the formation of startups or tendency of workers to switch jobs or move for new jobs.

Americans have seen firsthand that cutting regulations can lead to economic devastation. The deregulation of Wall Street in the 1990s and 2000s led to the financial crisis of 2008 and the Great Recession, cost Americans up to \$14 trillion, destroyed 8.7 million jobs and caused workers’ pension funds to lose nearly a third of their value. The Trump administration’s deregulatory obsession is costing America, massively. The “deconstruction of the administrative state” may sound appealing in abstract terms, but in blocking and rolling back key rules, the administration is inflicting needless pain on Americans every single day.

Table 3: Details of Rules Targeted or Eliminated by Trump Administration

| Rule | Agency | Description | Status | Annual benefit | Costs |
|---------------------------------------|------------|--|--|---|---|
| Clean car standards | EPA /NHTSA | Fuel economy and greenhouse gas emissions rules for new vehicles. | Replacement rule proposed | Source: Public Citizen tally of costs from EPA’s 2012 <u>regulatory impact analysis</u> of 2017-2025 light duty vehicle standards (page vi, table 2) and 2016 <u>midterm evaluation</u> of 2022-2025 light duty vehicle standards. (page A-183, table C.87) | Source: Public Citizen tally of costs from EPA’s 2012 <u>regulatory impact analysis</u> of 2017-2025 light duty vehicle standards (page vi, table 2) and 2016 <u>midterm evaluation</u> of 2022-2025 light duty vehicle standards. (page A-183, table C.87) |
| Fiduciary (investor protection) | Labor | Financial advisers must put clients’ interests above their own. | Overturned in court decision, Labor Dept did not appeal, and rule died. | Aggregate annual cost of conflicted advice is about \$17 billion each year, per Obama administration <u>analysis</u> . | \$1B-\$3.2B annually over 10 years. |
| Energy efficient light bulbs | Energy | Stricter standards for light bulbs. | Energy Department may withdraw | \$3.6 billion in consumer savings on electricity bills in 2020, rising to \$14.2 billion in 2025, then falling to \$10 billion by 2040. Source: Andrew DeLaski, Appliance Standards Awareness Project | \$1.8 billion in increased consumer spending on light bulbs, falling below zero by 2025 due to less-frequent bulb changes Source: Appliance Standards Awareness Project /American Council for an Energy-Efficient Economy |
| “Glider” engine emission requirements | EPAA | Used engines installed in new truck bodies must meet same emission standards as new engines. | Acting EPA Administrator Wheeler reversed decision to not enforce glider rule, but may go ahead with rollback. | Removal of all unrestricted glider vehicle emissions from the atmosphere would yield between \$6B to \$14B in annual benefits. | N/A: The EPA has estimated benefits but not costs, for this which is a part of a broader rulemaking on truck emissions. |

| | | | | | |
|---|----------|---|--|---|---|
| Ozone | EPA | Ground-level ozone standards | Delayed, under review | \$1.5B/year to \$3.5B/year Source: 2016 OIRA report (page 23) | \$700M/year Source: 2016 OIRA report (page 23) |
| Overtime pay | Labor | Requires overtime pay for workers making up to \$47,476 year. | Struck down by court after challenge from business groups. | \$1.2B/year for workers, per rule. | \$295.1M/year in direct costs to employers |
| Methane emissions from oil and gas sector | EPA | Methane leaks at oil well sites | Rollback proposed. | \$500M/year- \$600M/year Source: 2017 OIRA report (page 24) | \$400M/year- \$500M/year Source: 2017 OIRA report (page 24) |
| Battery backup/ uninterruptible power Supplies | Energy | Energy efficiency standards for battery backup systems | Delayed, lawsuit pending | \$260M to \$666M Source: Final rule (Page 15) | \$118 to \$157M Source: Final rule (Page 15) |
| Public lands methane | Interior | Regulation of methane leaks on public lands | Rollback finalized. | Source: Page 5-6 of Interior Department Regulatory Impact Analysis https://www.regulations.gov/document?D=BLM-2016-0001-9127 | Source: Page 5-6 of Interior Department Regulatory Impact Analysis https://www.regulations.gov/document?D=BLM-2016-0001-9127 |
| Portable Air Conditioners | Energy | Energy efficiency standards for portable air conditioners | Delayed, lawsuit pending | \$213M to \$448M Source: Final rule (Page 16) | \$53.3M to \$61 M (higher consumer prices) Source: Final rule (Page 16) |
| Commercial Packaged Boilers | Energy | Energy efficiency standards for commercial packaged boilers | Delayed, lawsuit pending | \$90M-\$261M Source: Final rule (Page 17) | \$31M to \$37M Source: Final rule (Page 17) |
| Oil rig safety | Interior | Safety valve for offshore oil rigs | Rollback proposed | \$157.2M-\$163.3M/year | \$92.7M-\$97.7M/year |
| Air Compressors | Energy | Energy efficiency standards for air compressors | Delayed, lawsuit pending | \$30M to \$113M Source: Final rule (Page 16) | \$8.8M to \$12M Source Final rule (Page 16) |

Mr. PALMER. I thank the witnesses for their testimony.

The chair will now recognize Mr. Massie for five minutes for his questions.

Mr. MASSIE. Thank you, Mr. Chairman.

Secretary Brinkman, you mentioned that Kentucky, under Governor Bevin's leadership, has repealed over 400 regulations and amended over 400 regulations? I didn't get the exact numbers, but can you tell us what some of the more consequential regulations have been in terms of easing up burdens on companies or fostering economic development?

Mr. BRINKMAN. Thank you, Congressman. The current data as of a couple days ago is 480 regulations have been repealed, 454 regulations have been amended. A good example of a regulation that we inherited was a—that older buildings that—above 45 feet you could not use PVC; you had to use cast-iron piping and—even though the International Plumbing Code authorizes PVC as a permitted piping material.

And what we found particularly in cities like Louisville and Lexington is we have older office buildings that are class C office buildings, and developers want to convert those to residential properties. And most of the traditional office buildings have their plumbing stacked near the elevator shafts. If you convert them to residential, you're going to have to expand the piping and—to accommodate residential living. And so we've estimated that that will save anywhere from, you know, \$100,000, \$200,000 per floor for developers to redevelop these office buildings into downtown living. So that's a perfect example where we had an outdated regulation that was just making it more difficult to redevelop these properties into downtown living.

We also had a rule that we called our cut rule that any boxing or wrestling match, if participants started bleeding in any instance, the match had to cease immediately. We repealed that, and now we have a very vigorous—become a very vigorous State for holding martial arts, wrestling, boxing matches, which are very popular with our population and adding to the economic vibrancy of our communities.

Mr. MASSIE. So did you get any pushback when you changed the regulation to allow PVC from the steel and cast-iron manufacturers or —

Mr. BRINKMAN. There was nothing major. There was —

Mr. MASSIE. Okay.

Mr. BRINKMAN. Because I think people recognized it was outdated and not necessary and in fact would further economic development without in any way compromising public safety.

Mr. MASSIE. And, you know, when we talk about reducing regulation at the government level, a lot of times we are thinking about reducing regulation on private business, but I served in county government, and there were State regulations that always constrained the county government. I am sure there are Federal regulations that constrain the State Government. Do you know of any of those regulations that eased up sort of the onerous demands on counties and cities or—not to put you on the spot but —

Mr. BRINKMAN. Right.

Mr. MASSIE.—it may be easier for me to ask it at another level. Are there regulations at the Federal level that you would like to see us reduce that are constraining your ability to improve things in Kentucky?

Mr. BRINKMAN. Well, I mean, certainly, the Waters of the United States and the regulations promulgated thereunder have been very restrictive and have made it difficult to develop property and add to the tax base, which, as you know, is critical for our counties and cities throughout Kentucky, particularly in light of the pension liabilities that exist.

There's a perfect example of that where if we have sensible regulation at the Federal level, we believe that we can have further economic development, which will add to the tax base, which will help all our counties and cities meet their financial obligations, help our school districts, which, as you know, education funding has been a challenge in light of our pension obligations. So that's a perfect example where we think that with sensible regulations at the Federal level, our school districts, or cities, and our counties will benefit immensely.

Mr. MASSIE. Ms. Jones, did you mention that you had a two-for-one rule in the regulation there in Canada? The President signed an executive order with a similar rule. I am a little bit worried that it is not really the number of the regulations but, I mean, regulation could be three orders of magnitude more restrictive than another regulation. Can you speak to the value of having a two-for-one rule and is it important to look at the magnitude of the regulation or the number of the regulations?

Ms. JONES. I think it's important to do both, so I think for the biggest rules you want to have robust benefit-cost analysis in place, but just like in a toolkit, you want to have maybe—if you wanted to have a robust toolkit, you'd have a sledgehammer and a hammer and a wrench and a screwdriver. You want to pick the right tool for the right job. And I think it is important to capture the blizzard of small things that can add up to a very big cumulative burden. And to do that with a simple measure that you can use broadly is good.

And the difference—there is a difference between the Trump two-for-one, which uses a more complicated measure and the British Columbia two-for-one, which used a simpler measure and was applied much more broadly. So the Trump two-for-one policy applies to about 8 percent of the most economically significant rules, using a cost-benefit analysis, which again absolutely has its place. British Columbia's was much more granular, so they counted everything. And each regulation could have literally thousands of regulatory requirements associated with it. That's what B.C. counted. It was very broad.

Mr. MASSIE. I like the granular approach. My time is expired, so I am going to yield back, Mr. Chairman.

Mr. PALMER. I thank the gentleman.

The chair now recognizes the ranking member, Mr. Raskin, for five minutes for his questions.

Mr. RASKIN. Thank you, Mr. Chair.

Ms. Jones, let me stick with you for a second. The project that you describe that took place in British Columbia was undertaken on a bipartisan basis —

Ms. JONES. It was —

Mr. RASKIN.—or a multi-partisan basis?

Ms. JONES. No. In British Columbia, it was a new government that came into power, a liberal government that came into power, and won an overwhelming majority actually because of concern around economic issues.

Mr. RASKIN. Yes.

Ms. JONES. However, the government has since changed, and the government that was previously in power has so far kept the reforms in place.

Mr. RASKIN. So, in other words, it's not so much a bone of ideological contention in Canada. Is that right? Or —

Ms. JONES. I think red tape reform has broad support across the political spectrum —

Mr. RASKIN. Yes.

Ms. JONES.—in Canada. You see that at the Federal level as well.

Mr. RASKIN. Yes.

Ms. JONES. Canada's one-for-one rule, you had all parties—in fact all votes except for one in Parliament on that legislation were for it.

Mr. RASKIN. Thank you. So, Mr. Narang, let me come to you. So I think everybody can agree that we would want to have as few rules as possible but all the rules that we need in order to advance what our public priorities are. How do you see the administration's deregulation campaign? Is it something that is focused on bureaucratic simplification, or do you see it as a cover for dismantling substantive rules that the administration opposes?

Mr. NARANG. Well, I'd say it's more the second, and the reason I say that—and look, I'll agree with others when I say it's not—it's probably good policy to get rid of regulations, as long as those regulations don't provide any safety benefits. But that is not what we're seeing with this executive order. There are no exemptions for regulations, for example, that provide safety benefits that have been proven to protect the public and have been proven to provide economic and social benefits above the cost. All the regulations are subject to the executive order, whether or not they protect the public and provide health and safety to the public.

Mr. RASKIN. Got you. So what would be a way to advance the goal of bureaucratic simplification, reducing red tape, and especially the time that is required to comply with regulations, while at the same time not undermining the public interest as it is embodied in specific legal mandates? And I don't know, Ms. Jones, whether you have got some take on that from the Canadians?

Ms. JONES. Yes, I think one of the important things that happen in British Columbia is that regulators themselves were part of the solution. This wasn't just the private sector saying here's the long list of rules that we want you to cut or eliminate. This was much more of a partnership. The private sector was engaged and consulted for where—small businesses were consulted. But regulators,

too, had a very important role, and I think they did a great job of helping to protecting the most important rules —

Mr. RASKIN. So it was like a broadly —

Ms. JONES.—while getting rid of the rest.

Mr. RASKIN.—consultative process where people are collaborating and then also the regulators are not demonized in the process but they are people who actually know where the different skeletons are and which rules seem to be atrophying or obsolete?

Ms. JONES. The way I would characterize it is you take regulation makers and you turn them into regulation managers, so they have two parts of their job. One is to find and develop new rules, but another part of their job is to continuously find and get rid of those ones that are duplicative or obsolete or no longer work anymore. And I think they're doing a pretty good job in British Columbia.

Mr. RASKIN. Yes. Mr. Brinkman, did you want to comment on that?

Mr. BRINKMAN. Yes. Under Kentucky law, we have a very rigorous process for promulgating and amending regulations. We have a public comment period. We get comments, and then oftentimes we amend the regulations. We have a statement of consideration, and then it goes before a standing committee of both the House and Senate of Kentucky with members of both the majority and minority parties that review those regs, and the regs go to the committee of jurisdiction, whether it's health and welfare or transportation, and any of those committees can find the regulations deficient. To my knowledge, and it's just to my knowledge, but I do not believe any committee has found any of our regulations—or proposed regulations deficient to date. I may be wrong, but I don't believe so because we have this consultative process with stakeholders and members of both chambers in both political parties.

Mr. RASKIN. Okay. Thank you, Mr. Chairman, I yield back.

Mr. PALMER. The chair recognizes the gentleman from Wisconsin, Mr. Grothman, for five minutes for his questions.

Mr. GROTHMAN. Yes. First thing, in dealing with rules, of course, rules have different sizes, you know? There are 100-page rules and there are one-page rules. And sometimes if you do like one in, one out or whatever, there are rules you want to change, and you call that a regulatory rule change but really what you are doing is you are putting in a rule that is beneficial. So at first blush they did one in, one out or one in and two out or whatever seems kind of simplistic because there are rules you want to change.

Do any of you want to respond to that?

Mr. VICKERS. I think, you know, rules are valuable, et cetera, but we need to consider as we're making them the cost of compliance. The cost of compliance is, you know, the handbrake that comes in

Mr. GROTHMAN. And nobody doubts that the rules are horrible and particularly on a Federal level they are probably unconstitutional to boot, but I am talking about a technical question, you know? If we are going to say we are going to get rid of one rule for every new rule we promulgate, new rules can come up that we like, right, because they kind of replace old, bad rules. I guess that

is what I'm saying. Just physically how do you deal with that problem?

Mr. BRINKMAN. If I might, one of the initiatives we've undertaken is we're looking at our section 1915(c) waivers. Those are the waivers for our individuals with development of disabilities. And these waivers were—and the accompanying regulations were written over a period of decades, and they're very inconsistent. They're difficult to understand. They're difficult to administer. And so we've undertaken an initiative. It's—we've been working on it for about a year. It's probably going to encompass another couple years because you have to get this right obviously. This—these clients, there's no margin for error.

But by just making the waivers and the regulations consistent and easier to understand, we believe that four groups are going to benefit: first and foremost, the clients and their parents and caregivers; second, the independent case managers; third, the providers; and then four, our internal staff within our cabinet. This is a situation where we are cleaning up relations for the benefit of four different populations.

Mr. GROTHMAN. If you are able to do that. Now, I am going to give you another question, which really gets to me the guts of the problem because I have dealt with administrative rules a lot on a State-level, and I am going to cover three areas I think we ought to completely undo on a Federal level: nursing homes, where so many employees spend forever filling out paperwork rather than taking care of their residents; special education, where I think we have people in special ed that shouldn't be there or in which the teachers spend an inordinate amount of time in this country filling out forms rather than working with students; and transportation, where everybody agrees that as soon as you put Federal dollars in a project, it costs wildly more than if there are no Federal dollars.

Nevertheless, I know on all three of these if we simplified them, in this country we would have a problem because, while I love friends of both parties, sometimes people of one party, out of maybe just a general distrust of business, will fight any changes that would seem just common sense.

What I will ask you to do if you have had any less regulation in your country, how do you deal with the more government-worshipping side of the aisle? How did you get them to go along and admit that sometimes the government is wrong or it is possible to put too much paperwork on business?

Ms. JONES. One of the arguments that we make when we're talking to those that might be a bit skeptical about cutting rules and the outcomes that might—that you might get as a result of that is that we need a lot more transparency in the system. And so with the B.C. regulatory requirements, you can see that if there were 10,000 regulatory requirements cut in the environmental area, you could ask—start asking tough questions like if there were worse outcomes, you could say look at those rules, and you could have those kinds of challenge functions. If the rules were cut and the outcomes were maintained at high levels, that gave you a different kind of feeling, but it gave more accountability and transparency into the system, which is good whether you think there should be

more rules or there should be fewer rules. And that's the kind of transparency we have on the tax side.

Mr. GROTHMAN. Mr. Brinkman, if you were able to reduce the regulatory burden in Kentucky, were you able to do it and both parties were able to go along with it?

Mr. BRINKMAN. Well, again, because of our statutory scheme, both parties have a role in reviewing regulations and voting on them and they could find them deficient. And again, we invite stakeholders to our public comment period. So we feel it's a very collaborative process, and to my knowledge I don't think the other party has found any—to my knowledge any of our regulations to be alarming, any regulations we've repealed or amended. I may be wrong, but I don't believe they've found any of those alarming —

Mr. GROTHMAN. Good for you —

Mr. BRINKMAN.—but sensible.

Mr. GROTHMAN.—and I look forward to dealing with the other Congressmen on this panel next year, and maybe we can sit on the side and make suggestions but I'm particularly focusing on those three areas, transportation, oh, the paperwork with the poor nursing homes, and special ed. Thanks.

Mr. PALMER. The gentleman yields back.

The chair recognizes the ranking member, Mr. Raskin, for— oh, wait a minute. The ranking member Mr. Krishnamoorthi—I am having a tough day today—for five minutes for your questions.

Mr. KRISHNAMOORTHY. Thank you, Mr. Chairman.

You know, my—look, I am a former small-business man, so I really appreciate any efforts to cut red tape and regulations, unnecessary regulations. However, you know, at the same time that we want to cut red tape, we don't want to, you know, lay out the red carpet for predatory practices or anticompetitive practices or anti-consumer practices, what have you.

So, you know, one—I am on the Ed and Workforce Committee in addition to being on the Oversight Committee, and one thing I wanted to ask Mr. Narang about is basically what we are seeing in terms of cutting rules that would basically prevent predatory practices in the education space and specifically the borrower defense rule. I think you mentioned this before. I am very concerned about this. This is the rule that basically allows students to basically recoup money that was fraudulently taken from them when they paid for worthless degrees or an education that really didn't pan out to anything. And so I would just like to get your sense of, you know, repealing the kind of a rule, you know, what kind of effect does that have and how do we, you know, deal with something like that?

Mr. NARANG. Thank you, Congressman. So we are also at Public Citizen are quite concerned about the growing student debt crisis in this country. It is maybe the biggest debt crisis that we have, and obviously it is handcuffing opportunities for students across the country. The borrower defense rule was an important rule that was put forward in during the Obama administration by the Education Department to make sure that students that do not get degrees that work out for them are able to avoid the kind of massive debt that we're seeing way too often with students.

Unfortunately, the Trump Administration's Education Department is rolling that back. They've done so in an illegal way, at least according to one court that has struck down the massive delay of the rule. These are critical protections for students. I don't—you know, if the Trump Administration continues down this road, we're not looking at any solutions for the debt crisis.

Mr. KRISHNAMOORTHY. So here is —

Mr. NARANG. We are just looking at actions that make it worse.

Mr. KRISHNAMOORTHY. Here is the deal, okay? Like when we promulgate the rules, we have to make sure on the one hand that we don't issue excessive red tape, we don't put obsolete regulations in place, and so forth. However, on the other hand, you have to balance that against regulatory capture by the industry that you are regulating. You don't want them to necessarily start to decide what the regulations are going to be so that they can continue with practices that perhaps the public is uncomfortable with.

And so I go to Ms. Jones and just ask you, how do you balance that? Because that is kind of what is happening in the education space. We know that in the current Education Department there are officials at senior levels who come from the very industries that they are trying to undo regulations on. So how do you prevent that

Ms. JONES. Well —

Mr. KRISHNAMOORTHY.—because we all want to see less red tape, but we don't want to open the door to predatory practices.

Ms. JONES. Well, I'll come back to two of the—what I think are the lessons from British Columbia. One is political leadership. And the minister responsible for the regulatory reforms in British Columbia was very clear that this wasn't just about cutting rules, that enforcement was going to be strong, fines in many cases went up so there were fewer rules, but enforcement and the penalties for disobeying the rules were in place, so that's —

Mr. KRISHNAMOORTHY. So there is real independence.

Ms. JONES. So that's an important —

Mr. KRISHNAMOORTHY. Yes. Yes.

Ms. JONES.—part of the equation. And I would say the second lesson from the British Columbia model that's relevant here is really the engagement of regulators. So this isn't just about—it's not one extreme or the other. You're looking for that happier middle ground —

Mr. KRISHNAMOORTHY. Right. Right.

Ms. JONES.—right, where it's not no rules. That's not what they were doing. But the—the overarching lesson is you can have high levels of health, safety, and environmental outcomes with many fewer rules. And that's good for everyone. And, by the way, not just for business, for citizens. So things like the childcare —

Mr. KRISHNAMOORTHY. Right.

Ms. JONES.—subsidy application that used to take four —

Mr. KRISHNAMOORTHY. Right.

Ms. JONES.—that used to take—you know, it was 18 days and now it takes four days, you know, things like that were good for citizens.

Mr. KRISHNAMOORTHY. So I agree. I was just recently in Kentucky, sir, and I see that there is change afoot, but I heard a lot

of complaints about the Federal Government. Do you know why? Because of uncertainty on trade rules and tariffs at the Federal level. And you know the bourbon industry is obviously intensely affected. So talk to me about uncertainty and unpredictability with regard to Federal trade rules and regulations and how does that affect you?

Mr. BRINKMAN. Well, I mean, obviously, that's a national debate that's going on that affects a number of industries in Kentucky, as you referenced. But more to the point in terms of our efforts with our Red Tape Reduction Initiative, as I indicated in my testimony, one of the things we're doing is we're conforming to the Federal counterparts, so if the Federal Government determines that a regulation is appropriate, we're conforming to that Federal counterpart. Too often in the past we had a separate regulation dealing with the same subject matter with inconsistent definitions and standards. That makes it impossible for any business, including any small business —

Mr. KRISHNAMOORTHY. Sure.

Mr. BRINKMAN.—to try to figure out what the rules of the game are. So that's part of our —

Mr. KRISHNAMOORTHY. Sure.

Mr. BRINKMAN.—initiative where we're not necessarily weakening the regulatory regime. We're simply recognizing the supremacy of the Federal Government —

Mr. KRISHNAMOORTHY. Sure.

Mr. BRINKMAN.—and conforming to it.

Mr. KRISHNAMOORTHY. Sure. But where you don't have a State analog to a Federal rule, which has supremacy or, you know, takes the whole domain like trade, you want predictability, you want some certainty?

Mr. BRINKMAN. Of course.

Mr. KRISHNAMOORTHY. Yes.

Mr. BRINKMAN. Of course. As you well know, being a small-business person, that predictability, understanding the rules of the game is paramount of the ability to, you know, sustain the business. We know that's very important.

Mr. KRISHNAMOORTHY. Got it. Thank you.

Mr. BRINKMAN. Yes.

Mr. PALMER. I thank the gentleman.

The chair now recognizes the gentleman from California, Mr. DeSaulnier, for five minutes for his questions.

Mr. DESAULNIER. Thank you, Mr. Chairman.

The chairman and some of my colleagues are sometimes mystify that I was once a Republican when they see how I vote, but this is an area where at least in my life experience it was a bipartisan effort, and these questions are directed to Mr. Narang because I understand you have done some investigation on this.

I was appointed by Governor Pete Wilson in 1996, '94, to be a member of the California Air Resources Board. This is to enforce the U.S. Clean Air Act and the California Clean Air Act. The U.S. Clean Air Act, which was signed originally by Richard Nixon, a Republican from California, recognizing that California had much more severe public health costs when it came to pollution. Then reauthorization was signed by another Californian, Ronald Reagan,

and a Republican. I was reappointed by Governor Schwarzenegger, a Republican, and then Governor Davis, a Democrat.

So one of the joys of being on that board was that it was largely nonpartisan up until recently, that there were always equal members left over from previous administrations. But we did cost-benefits that I thought were terrific. The staff knew that they wouldn't bring something to the board or committee of the board until it had been thoroughly cost-benefited, which I thought was really good, particularly the public health costs, given its charge.

So in that context we spent many, many years coming up with State statutes that went to issues around climate change and carbon emissions. We were very careful that we wouldn't be preempted under CAFE standards at the Federal level. We applied for a waiver. We had never been denied a waiver under the Clean Air Act until this instance. The Obama administration came in and gave us the waiver. We were going to prevail, most legal experts opined. And now we have this administration wanting to roll Obama administration regulations around carbon to complement California Air Resources Board work that has been in effect in a bipartisan level way for 20 years, actually longer than that when our Scientific Advisory Committee first came to us and said this is a problem.

So the estimate I understand that you have done some work on is that this rule, if it goes into effect and we can't work something out with California, the Administration, the car industry, will cost \$100 million to enforced but will cost almost \$1 billion to the economy. So could you talk a little bit about that? And politics and political opinions being driven and entering into, which I think should be nonpartisan if we had the benchmarks right in measuring statutes and regulatory efforts to make sure that they were—we could have a real conversation about their benefits and their costs.

Mr. NARANG. Thank you, Congressman. So there are reams of evidence demonstrating that fuel economy standards are good for the economy, for the national economy, for State economies. This is separate of course from the, you know, environmental benefits that we get from increased fuel economy standards. This is—actually I think maybe the most interesting recent piece of evidence is when the Trump Administration proposed the rollback and potentially, you know, superseding of California's waiver. There was a lot of internal disagreement between the Department of Transportation and EPA. And the EPA experts, you know, were showing—this all came out post-proposal of the rule, but the EPA experts were showing strong data to the Department of Transportation officials saying, look, all of the—the methods that you're using, the numbers that you're using, they are wrong. You're making assumptions that are not based in fact, and the EPA can't support these conclusions.

Now, obviously, the EPA, you know, is partly involved in the rollback, but I think it was very telling to see those behind-the-scenes documents from EPA staff to the Department of Transportation staff, making it clear that they did not feel that the evidence that now, you know, the Department of Transportation is relying on in rolling back the fuel economy standards, that that is solid evidence

that—lots of EPA studies, cost-benefit studies dating back decades show that the Department of Transportation numbers are wrong.

Mr. DESAULNIER. So I would just like to conclude. When I was in the legislature, I was a big supporter because I represented California in the National Conference of State Legislators. And I looked at what States were doing around regulatory authority, and I actually thought one of the really good things that Texas did was their Sunset Commission, an independent commission that did terrific work in looking at statutes and regulatory issues and doing cost-benefits and saying, you know, it is not working as intended. The legislature either needs to change it or we are going to sunset it.

So I really think there is a wonderful opportunity here, as I say, if we get the framework right, that this would be nonpartisan. I think all of us want government to work better and more efficiently for Americans. And, Mr. Chairman, I know you feel the same way, so hopefully, this can become more of that dialogue and less of the political dialogue. Thank you, Mr. Chairman.

Mr. PALMER. I thank the gentleman, and I do have great hope that this can be a bipartisan effort. It is interesting. We had three regulatory reform task force hearings last year in 2017 with agency representatives who came and testified about agency employees implementing the executive orders. And frankly, when we announced these hearings, I thought that we would get some pushback. I thought there would be some resistance, but what we found was not only was there no resistance, there was enthusiasm for it. And the thing that I tried to get across to people is, first of all, we all breathe the same air, we are all drinking the same water, whether it is bottled or otherwise. We are walking on the same grounds. Our kids and families are breathing the air and drinking the water. That is not what this is about. What this is about is having a sensible regulatory environment.

And what we have found from the regulators who came over, the folks who were trying to implement this is this helps them do their job. When you have regulations that are accumulated to the degree that they have over time, you start to realize that you are trying to implement regulations that are obsolete. You are implementing regulations that people have forgotten were on the books that you have duplicated, and they don't match, and in many cases they are contradictory. It imposes an enormous cost on businesses. This is not rolling out the red carpet, as somebody said, to business. That is not what this is about. This is about sensible regulation because I think that it is one area where we agree.

The regulations that we have adopted over the years, particularly on the environment, have resulted in dramatic improvement in environmental quality. I mean, our economy has grown almost 500 percent since 1980. Vehicle miles have gone up over 100 percent. Population has increased over 30 percent. Energy consumption is up over 30 percent, but emissions, for instance, are down over 50 percent. We are making progress. What we want to do is make sure that we can continue to make progress, but at the same time allow people to flourish. And it almost sounds like another opening statement, so I am now going to recognize myself for five minutes for questions as we await the call of votes.

And one of the things in the State of Alabama that we were looking at doing—I was on the Governor’s Task Force for Improving State Government—was to create a one-stop shop. And we are talking about getting rid of the obsolete regulations and the duplications and the contradictions, but we also need to make it easier for people, whether it is getting permits or being able to get answers in regard to their questions about regulations. Has that been part of what has been done in British Columbia or Australia or Kentucky? And we will begin with Ms. Jones.

Ms. JONES. Yes, in British Columbia there’s been some work to do one-stop shopping for sure. That was part of the reforms, and I think that’s gone over very well. There’s also at the Federal level ongoing work to simplify that and have one business number and that kind of thing, so that’s certainly very popular. I think it’s one of many, many things that needs to be done, and that was, again, one of the things that B.C. did right was they didn’t say bring us—often, I’ve been involved in regulatory reform exercises where people will say bring us your top 10 irritants. And it’s not about the top 10 irritants. The one-stop shop may be very well on that list, but it really is about the blizzard of little things. So, again, having that broad, clear, simple measure was very helpful in that regard.

Mr. PALMER. Mr. Vickers?

Mr. VICKERS. Yes, SBR and Australia is in effect a one-stop shop. It allows you to file your taxes, to register a business, to register an employee, and so on through a single reporting framework. And the way that that worked was agencies came together, agreed on a common taxonomy, and generated reports using those common data elements. And when you do that, you reduce the cost of compliance significantly, and that has huge benefits for business. I quoted the A\$1.4 billion figure before. Ninety-seven percent of that was savings to small business, so a huge number of that.

Mr. PALMER. Yes.

Mr. BRINKMAN. Yes, Mr. Chairman, that’s the other part of this initiative that I didn’t discuss, but clearly, we are creating one-stop. We have initiatives for one-stop for businesses and individuals to go to one portal to handle all their needs. And our applications are going online so people can complete the applications online, submit the payment for a renewal fee for a license, that type of thing online, and we’re also working with our agencies every day to cut down on the processing time to respond to requests for permits or applications or things of that sort because we know that one of the more frustrating things for individuals and businesses is the uncertainty of not knowing when or if an application, a license, a permit, et cetera, is going to be granted. So we are very cognizant of the need to be responsive, and that is part of our initiative.

Mr. PALMER. You know, Mr. Vickers—well, go ahead. You would like to follow up?

Mr. VICKERS. Yes, just quickly. I would encourage you to think about the harmonization—potential harmonization between Federal and State compliance regulations. It’s one thing to focus on, say, the State of Alabama or Kentucky, but if you still have to deal with the Federal Government separately, that is—that introduces a burden.

Mr. PALMER. Well, that is part of what we are trying to do, and you, in your previous response to my question, said that 97 percent of the savings went to small business, and that is really the economic engine of the American economy. It is the employment engine of the American economy. Massive corporations have the resources to hire compliance people to make sure they comply with this, but small business really gets hammered by the overaccumulation of regulations.

And I had entered into the record this—it's actually an article about the Gallup report, the Gallup organization report that came out back in 2014. It showed that we were averaging 100,000 more business startups than closures prior to 2008. And then we went through—and this sounds partisan, but it is just facts. We went through what I would consider a blizzard of new regulations, and there were also other issues with the recession, but I think this compounded the problem, that by 2014 we had gone from 100,000 more businesses opening than closing to 70,000 more businesses closing than starting up. And on a per capita basis we no longer ranked first in entrepreneurship or third or fourth. We ranked 12th. And it is particularly harmful for small business.

And one of the things about what we are trying to do with the regulatory reform, the red tape reduction and what you people have done successfully I might add is that you have removed uncertainty. And I preach this till I am blue in the face, but money is just like water. It will always seek the path of least resistance. And when you have got particularly small businesses, they are already taking risk, you just add to that risk aversion when you have overly complex regulations. What people want is a predictable environment in which to invest.

And if you do what has been done in British Columbia and Australia and Kentucky and in the U.K., you reduce the uncertainty. And for us in our economy that is particularly important because we see what is happening right now in the economy and the low unemployment. As we continue to create an environment where people will start a business, you will hire more people, wages will go up because it puts upward pressure on wages, that is really what we are trying to do here. We want to create an environment where we don't diminish the quality of our environment. We want to continue to improve that. And by the way, wealthy nations do that. Poor nations don't as well. But we want people to flourish.

And really the good thing about this—and I speak to my good friend from California, Mr. DeSaulnier—and he is a good friend. We have become very good friends since our time in Congress; we came in at the same time—is that what British Columbia and Australia and Kentucky and even the U.K. have done is they have created a model. You have worked out some of the kinks that I think is going to be very, very helpful and instructive to us so that it significantly reduces the potential for missteps and what we are trying to do.

So I want to thank our witnesses for appearing today and for the great work that you all have done. As I said before, it has been very helpful to us all, and we look forward to interacting with you again in the future.

The hearing record will remain open for two weeks for any member to submit a written opening statement or questions for the record. If there is no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 3:31 p.m., the subcommittees were adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

GALLUP®

JANUARY 13, 2015

American Entrepreneurship: Dead or Alive?

BY **JIM CLIFTON**

Chairman and CEO of Gallup



STORY HIGHLIGHTS

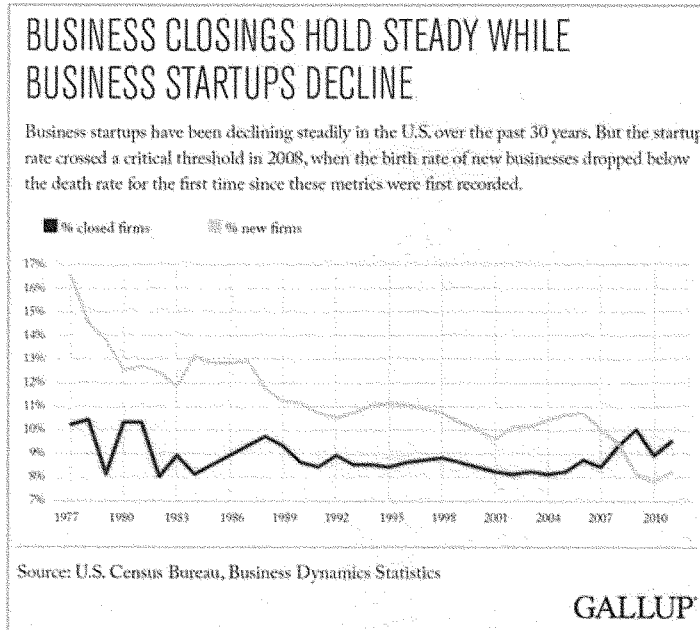
- The birth and death trends of U.S. business must be reversed
 - The economy is more important to security than the military
 - America has misdiagnosed the cause and effect of job creation
-

The U.S. now ranks not first, not second, not third, but 12th among developed nations in terms of business startup activity. Countries such as Hungary, Denmark, Finland, New Zealand, Sweden, Israel and Italy all have higher startup rates than America does.

We are behind in starting new firms per capita, and this is our single most serious economic problem. Yet it seems like a secret. You never see it mentioned in the media, nor hear from a politician that, for the first time in 35 years, American business deaths now outnumber business births.

The U.S. Census Bureau reports that the total number of new business startups and business closures per year -- the birth and death rates of American companies -- have crossed for the first time since the measurement began. I am referring to employer businesses, those with one or more employees, the real engines of economic growth. Four hundred thousand new businesses are being born annually nationwide, while 470,000 per year are dying.

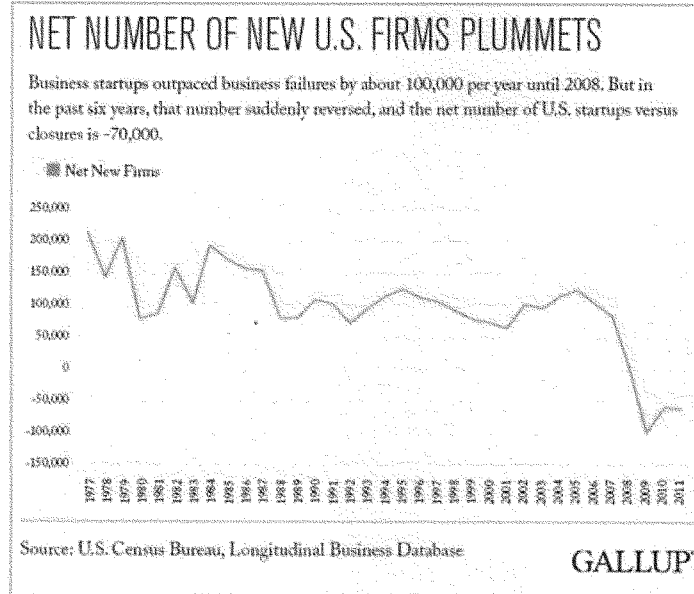
You may not have seen this graph before.



Until 2008, startups outpaced business failures by about 100,000 per year. But in the past six years, that number suddenly turned upside down. There has been an underground earthquake. As you read this, we are at minus 70,000 in terms of business survival. The data are very slow coming out of the U.S. Department of Census, via the Small Business Administration, so it lags real time by two years.

Net Number of New U.S. Firms Plummets

Business startups outpaced business failures by about 100,000 per year until 2008. But in the past six years, that number suddenly reversed, and the net number of U.S. startups versus closures is minus 70,000.



My hunch is that no one talks about the birth and death rates of American business because Wall Street and the White House, no matter which party occupies the latter, are two gigantic institutions of persuasion. The White House needs to keep you in the game because their political party needs your vote. Wall Street needs the stock market to boom, even if that boom is fueled by illusion. So both tell us, "The economy is coming back."

Let's get one thing clear: This economy is never truly coming back unless we reverse the birth and death trends of American businesses.

Dead-Wrong Thinking

It is catastrophic to be dead wrong on the biggest issue of the last 50 years -- the issue of where jobs come from. Our leadership keeps thinking that the answer to economic growth and ultimately job creation is more innovation, and we continue to invest billions in it. But an innovation is worthless until an entrepreneur creates a business model for it and turns that innovative idea in something customers will buy.

Yet current thinking tells us we're on the right track and don't need different strategies, so we continue marching down the path of national decline, believing innovation will save us.

I don't want to sound like a doomsayer, but when small and medium-sized businesses are dying faster than they're being born, so is free enterprise. And when free enterprise dies, America dies with it.

Let's run some numbers. You will often hear from otherwise credible sources that there are 26 million businesses in America. This is misleading; 20 million of these reported "businesses" are inactive companies that have no sales, profits, customers or workers. The only number that is useful and instructive is the number of current operating businesses with one or more employees.

There are only 6 million businesses in the United States with one or more employees. Of those, 3.8 million have four or fewer employees -- mom and pop shops owned by people who aren't building a business as much as they are building a life. And God bless them all. That is what America is for. We need every single one of them.

Next, there are about a million companies with five to nine employees, 600,000 businesses with 10 to 19 employees, and 500,000 companies with 20 to 99 employees. There are 90,000 businesses with 100 to 499 employees. And there are just 18,000 with 500 employees or more, and that figure includes about a thousand companies with 10,000 employees or more. Altogether, that is America, Inc.

Let me be very clear. America, Inc. is far more important to America's security than our military. Because without the former prospering -- and solvent -- there is no latter. We have enormous military power only because of a growing economy that has, so far, made it possible for the government to pay its bills. When former Chairman of the Joint Chiefs of Staff, Adm. Mike Mullen, was asked in a Senate hearing on June 28, 2011, to name the biggest current threat to the security of the United States, he didn't say al-Qaida. He didn't say Iran's nuclear capabilities. He answered, "I believe our debt is the greatest threat to our national security."

Declining Businesses Mean Declining Revenues for Social Spending

Keep in mind that these 6 million businesses, especially small and medium-sized ones, provide jobs for more than 100 million Americans and much of the tax base for everything. These small, medium and big businesses have generated the biggest economy in the world, which has allowed the country to afford lavish military and social spending and entitlements. And we've been able to afford all of this because, until now, we've dominated the world economy.

When new businesses aren't being born, the free enterprise system and jobs decline. And without a growing free enterprise system, without a growing entrepreneurial economy, there are no new good jobs. That means declining revenues and smaller salaries to tax, followed by declining aid for the elderly and poor and declining funding for the military, for education, for infrastructure -- declining revenues for everything.

America has maintained the biggest tax coffers in the world because its 300+ million citizens have produced and owned one-quarter of virtually all global wealth. The United States clobbered everyone in the battle of free enterprise, in the battle of business building, and in the battle of inventing the future. Until recently, America had blown the world away in terms of economic success. We are now quickly losing that edge, and everything we're trying to do to fix the problem is dead wrong.

Here's why: Entrepreneurship is not systematically built into our culture the way innovation or intellectual development is. You might say, "Well, I see a lot of entrepreneurial activity in the country." Yes, that's true, but entrepreneurship is now in decline for the first time since the U.S. government started measuring it.

The whole country and subsequently the world are having their own dead-wrong moment, and it is causing America and the whole world to make everything worse. And people know it, though they may not know why. When Gallup asked Americans to rate how much they personally worry about particular problems facing the country, the top three issues that respondents worry about a "great deal" were the economy (59%), federal spending and the budget deficit (58%), and the availability and affordability of healthcare (57%).

The more we execute on our leadership's erroneous belief in innovation, the more our engine stalls out -- and the more people rightly worry about economic issues.

Because we have misdiagnosed the cause and effect of economic growth, we have misdiagnosed the cause and effect of job creation. To get back on track, we need to quit pinning everything on innovation, and we need to start focusing on the almighty entrepreneurs and business builders. And that means we have to find them.

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RELEASE DATE: January 13, 2015

SOURCE: Gallup <https://news.gallup.com/businessjournal/180431/american-entrepreneurship-dead-alive.aspx>

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