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PARTICIPANTS:

REMARKS ON PRESIDENT OBAMA'S REGULATORY REVIEW PROCESS

Introduction:

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P R O C E E D I N G S

MR. ALTMAN: Thank you. Hi and good morning. I'm Roger Altman and it's my pleasure to introduce Cass Sunstein, who is the Administrator of the Office of Information and Regulatory Affairs, or much more widely known as OIRA. We very much appreciate him taking the time to be with us this morning. His actually is a really important job.

Mr. Sunstein is responsible for overseeing many of the new federal regulations, which are promulgated, and we all know that's a very large volume. In addition, over the past five months he has been overseeing a review of existing federal regulations with an eye towards looking for opportunities to improve the impact of regulations on competitiveness, on employment, and on growth.

And you can see why we're particularly happy to have him here today because the relationship between regulation and innovation is an obvious and very important one. You know, OIRA is one of those very peculiar Washington Institutions.

If you walk down the street of Washington – you're walking down the street and you say to someone wow, there's Cass Sunstein, he runs OIRA, people go gee, that's really, really important; he's an important guy. In New York, where I live, if you're walking down the street and you say wow, there's Cass Sunstein, he runs OIRA, people say I don't think I've eaten there yet. But it's actually very important.

Before joining the Administration, Mr. Sunstein served as a

Professor of Law at Harvard Law School, and before that for 27 years at the University of Chicago Law School. And I'm mentioning that because that University is my own alma matter so it deserves all of the attention it can get.

He specialized in Administrative Law, in Regulatory Policy, and Behavioral Economics — of the latter, he is a prolific author. I think Esquire Magazine referred to him as writing books about as often as most people use their dishwashers.

But most recently, he coauthored what really is an important book and I was just saying to him that I had the opportunity to read it. It's called *Nudge*, and it argues that all of us can make better decisions, for example, on our health, through nudges or better presentation of decision choices. It's really a fascinating and extraordinarily important book, which he coauthored with Professor Thaler at the University of Chicago. So we're very pleased to have him with us and it's my pleasure to introduce him: Cass Sunstein.

MR. SUNSTEIN: Thank you, Roger, for that incredibly kind introduction. A special thanks to Michael Greenstone for inviting me. He was an extraordinary colleague when he was in the Administration as Chief Economist at CEA and it was an honor and a pleasure to get to work with him.

With respect to OIRA, I'll tell you a little story. I met my now wife and mother of my little boy on the campaign and when we were almost dating, kind of pre-dating, you know, that stage, she asked me — I think it was our first dinner -- if I could have any job in the world other than being a law professor, what would it be. A good date — pre-date question, yes. Hoping -- I've learned

subsequently that I'd say, you know, I would play center field for the Boston Red Sox or play backup guitar for Bruce Springsteen.

As she tells this story, and I'm afraid it's true, I looked off with a starry glazed eye and said OIRA. She responded some version of what the heck is OIRA. I don't know if she actually used the word heck. And amazingly I did get a second date but that exchange was an obstacle.

As you may have noticed in the last year and in the last months especially, the national debate over regulation has become at once quite heated and badly polarized. Some people have emphasized, and I'm sure you've heard this, the crucial importance of regulatory safeguards, including rules that prevent fraud and abuse, keep water and air clean, reduce deaths on highways, and ensure that the food supply is safe.

Other people with at least equal passion have been objecting to expensive regulations contending that they -- economic growth, undermine competitiveness, compromise innovation, and cost jobs. In the abstract, both of the contending forces in this debate make legitimate points.

But hard questions can't be resolved in the abstract, and in important ways the two positions are stuck. That is, they're stuck in an outmoded and decreasingly helpful debate from decades ago as if the only question or the central question is less or more.

What I want to emphasize here is that in recent years we've learned a lot about regulation and we've moved well beyond the less or more question. As a result of empirical advances and some conceptual ones, we know

much more than was known during the New Deal and during the Great Society. In fact, we know a lot more than was known in the 1980s and 1990s. We know more clearly than our predecessors did, even in the recent past, that risks are a part of systems and that efforts to reduce a certain risk, maybe an environmental risk, maybe a safety risk, may increase other risks, perhaps even deadly ones, thus producing ancillary harms.

Risk regulation can in this respect be risky. We know too that efforts to reduce a certain risk may reduce rather than increase other risk, perhaps even deadly ones, thus producing ancillary benefits. We know that risk regulation can be synergistic.

We now have state of the art techniques for anticipating and cataloging the likely consequences of regulation and for getting a clear rather than murky handle on both costs and benefits. We know that when rules impose high costs they do not merely affect and burden some abstraction called business. They often affect consumers and workers including prospective workers as well.

We know that flexible innovative approaches, maintaining freedom of choice, and preserving room for private creativity, and the capacity for private innovation, that flexible approaches like that are often desirable both because they preserve liberty and because they cost less.

We know more than ever before that large benefits can come from seemingly small and modest steps, including simplification of regulatory requirements, provision of information to the public, and sensible default rules

such as automatic enrollment for retirement savings.

Complexity can have large and unintended harmful consequences and efforts to promote ease and simplicity can greatly reduce costs and burdens. We know much more clearly than ever before that it is important to allow public participation in the design of rules because members of the public often have, and I've seen this acutely myself, valuable and dispersed information about likely effects, existing problems, creative solutions, and possible unintended consequences.

We know that if carefully designed, disclosure policies can promote informed choices, promote innovation, and save not just money, but lives. We know, and this is really important, that intuitions and anecdotes are both unreliable basis for regulatory policy making. And we know similarly that advanced testing of the affects of rules, as through pilot programs or randomized controlled experiments, as is done in the context of medicine, can be not just illuminating but indispensable.

We know that it is important to explore the effects of regulation in the real world, not just in advance, to learn whether rules are having their intended consequences or are producing inadvertent harm. To go beyond an increasingly stale and unhelpful debate with its crude focus on that less or more question, we need to begin with these understandings.

Above all we need careful assessments before rules are issued and we need continuing scrutiny of the sort the Governments typically haven't applied. We need continuing scrutiny afterwards.

Of course it's true, and this is a truth that underlies some of the intense emotions of the last months in the unlikely domain for intense emotions, that is regulation. We know it is true that people's values differ and in some cases the relevant values are going to lead in a certain direction even when the evidence is clear.

What I want to emphasize now and put in bold letters if I may, is the opposite possibility. That where the evidence is clear it will often lead in a certain direction even when there are differences with respect to underlying values. If for example a regulation is going to save a lot of lives and cost very little, people are likely to support it no matter their party identification. And if a regulation would produce little benefit but impose big costs on real human beings, citizens are unlikely to favor it regardless of whether they like elephants or instead donkeys.

The polarized debate of the last few months has obscured some important facts. The Chamber of Commerce recently announced that it is starting a series of road show events to complain about what it sees as a regulatory tsunami. We completely agree on the importance of reducing unjustified costs, but there is no tsunami.

Indeed the annual cost of regulations has not increased during the Obama Administration. In the last decade, the cost of economically significant rules from executive agencies that have gone through the Office of Information and Regulatory Affairs, were highest not in 2009 or 2010, but in 2008.

In its last two years, executive agencies in the Bush

Administration imposed far higher regulatory costs than did those agencies in the Obama Administration during our first two years. Put costs to one side. There has not been an increase in rulemaking in the Obama Administration. The number of significant rules reviewed by the Office of Information and Regulatory Affairs in the first two years of this Administration is actually lower than the number in the last two years of the Bush Administration.

Many of the most important developments in the last two and a half years have not involved an outpouring of rules or an increase in regulatory costs, but the development of flexible low cost innovation friendly approaches building on a lot of the new thinking about regulatory policies.

These approaches include dramatic simplification of the free application for financial student aid form. I don't know how many of you, or your children, or relatives have had to fill out that form; it used to be really complicated. The simplification is going to enable a lot of young people to apply for aid and go to college.

The new innovations include consumer friendly disclosure policies including, very recently, informative new labels for fuel economy and for sun screen. The new approaches include replacement of the widely criticized food pyramid; do you remember it? It's extinct – with the widely praised food plate. Take a look if you would. The new approaches include a series of important private public partnerships designed to reduce childhood obesity and to diminish the risks of distracted driving. They include policies to promote automatic enrollment in savings plans.

Earlier this year, President Obama adopted an Executive Order that explicitly reflects a lot of the new thinking. The word innovation is in the first sentence of the new Executive Order. The first paragraph pointing to the crucial importance of empirical testing emphasizes that our regulatory system, “must measure and seek to improve the actual results of regulatory requirements.”

Among other things, the President has called for, what Roger referred to, an unprecedented, historic, evened, government-wide look back at federal regulation. Agencies are asked to reexamine all their significant rules and to streamline, reduce, improve, or eliminate them on the basis of that examination.

What we have now released quite recently is look back preliminary plans from 30 departments and agencies. On the plans you can see, they look forward but also look at the very recent past. They reflect immediate steps already taken to eliminate hundreds of millions of dollars in annual regulatory costs. In the immediate future, we expect to be over a billion dollars in cost reduction. Over the next several years, we expect to be in the billions.

These steps will free up the private sector to grow, to innovate, and to hire. All in all, the plan’s initiatives will save tens of millions of hours in annual paperwork burdens on individuals, businesses, and state and local governments.

The plans consist of over 500 pages. There are hundreds of regulatory reform initiatives, many of them focusing specifically on small business, a major source of innovation in the United States. Some of the

hundreds of initiatives represent a fundamental rethinking of how things have been done, as for example with numerous efforts to move from paper to electronic reporting.

And while this might seem kind of dry and obvious, it's important to emphasize the extent to which, in my job, we see countless pleas on the part of those in the private sector; from little companies to very large ones you would have heard of. Please let us do our filing electronically. It's going to save us a lot of money in the short run.

Over the next five years, the Department of Treasury's paperless initiative -- not clear if that's made the front page of the newspapers, but it's going to save \$400 million in costs and 12 million pounds of paper. We're also rethinking regulations that require use of outdated technologies; regulations that have been long on the books but not changed. They freeze outdated technologies.

Many of the reforms will have a significant economic impact. In my discussions with members of the business community over the last month or so, the one kind of eye catching rule is from the Occupational Safety and Health Administration, which recently announced it's going to eliminate 1.9 million annual hours of redundant reporting requirements on employers and save in the process more than \$40 million annually.

Another rule that has gotten a lot of favorable attention with the small business community is one that eliminates an odd definition of oil that swept up milk in the definition and thus subjected milk producers to costly

regulations designed to prevent oil spills. The exemption will save the milk and dairy industries as much as \$1.4 billion over the next decade.

The Occupational Safety and Health Administration also plans to finalize a proposed rule that's going to harmonize our rules for hazard communication with those of other nations and simplify the requirements, thus saving an annualized \$585 million for employers.

The Department of Transportation expects to have initial savings of up to \$400 million from an alteration of an existing rule that is regulating trains. There's been a lot of attention with particular focus on innovation to unnecessary barriers to exports, including duplicative and -- duplicative and redundant is good phraseology because it shows you the point, doesn't it.

The goal of this is to reduce regulatory burdens and uncertainty faced by American companies and their trading partners. If you look at the plans from the Commerce Department and the State Department, they are very ambitious with respect to export reform.

There's been a lot of discussion about undue complexity and transaction costs under the Endangered Species Act. The Department of Interior is now all over that topic attempting to clarify and expedite. In the context of discussions of the healthcare system, one thing we've heard a lot is that there are requirements placed on hospitals and physicians that have accreted over time and are not helping doctors and patients, just imposing costs on them. The Department of Health and Human Services has a long series of initiatives to reconsider those regulatory requirements, to ask whether they are really helping

anybody.

Of course we don't need only to look back. That's been my focus in the last few minutes. We also need to look forward to determine how best to regulate in a difficult economic time. The President has issued in this short Constitution-like Executive Order a series of new directives to apply to and answer exactly that question.

I'd like to end -- just to briefly elaborate four key points on regulation going forward. First, the President has made an unprecedented commitment to promoting public participation in the rulemaking process with a central goal of ensuring that rules will be informed and improved by the dispersed knowledge of the public.

There's a cliché in the world of administrative law. I taught administrative law for a long time and I'll tell you the cliché, which I confess I'm responsible in part for perpetrating on law students. And the cliché is that the notice in comment process, which all of the agencies engage in typically, is a little bit like kabuki theater: by the time a rule goes out to the public, it's cooked.

There have been engagements within the Federal Government, perhaps with affected stakeholders, and notice and comment is to human emotions, to reality, as kabuki theater is to human emotions; a stylized kind of drama that doesn't capture really the real thing.

In terms of the last couple of years, nothing could be further from the truth. The notice and comment process is an indispensable one for learning about good directions, less good ones, possible creative solutions by tapping the

expertise, perspectives, experience of those who are interested, or closely following, or likely affected by rules.

The President has emphasized the crucial importance of providing an opportunity for public participation, not just by making rules available, but by making relevant, scientific, and technical support documents available too; public participation theme one.

Theme two; we've heard a lot in the last two years, and I know the Bush and Clinton Administration has heard this too, about the difficulty of those who face rules that aren't harmonized or consistent or forced to link up closely with one another. This seems somewhat technical but if you're a small business facing cumulative burdens or something from one agency that fits poorly with something from another agency, it might make life a lot harder.

For the first time, the President has specifically directed agencies to take steps to harmonize, simplify, and coordinate rules. And if you follow the Federal Register, first my condolences, but second, you will notice that there are explicit references to efforts undertaken to coordinate and simplify and harmonize.

The relevant provision of the Executive Order -- happily for this conference -- is called "Integration and Innovation." Because there's a clear recognition that innovation can be compromised if rules are redundant, inconsistent, or overlapping. And if you want to free up the private sector to innovate, we need to get that problem under control.

Third point; the Executive Order stresses the importance of

quantifying costs and benefits in a way that's gone beyond anything any former President has done. This President has directed agencies to, and these are very few words, use the best available techniques to quantify anticipated present and future benefits as accurately as possible and also to proceed only on the basis of a reasonable determination that the benefits justify the costs.

Fourth and final point about regulation going forward; the Executive Order directs agencies to identify and consider approaches that are flexible, that reduce burdens, and the most important words perhaps, that maintain freedom of choice for the public.

The key here is to stress the immense value of identifying and considering approaches that maximize freedom of action on the part of those who are regulated. Such approaches might include for example, warnings, appropriate default rules, and provision of information in a form that is clear and intelligible.

And hearken back, if you would, to the recent fuel economy labels and the recent labels for sunscreen, which are specifically designed to provide information in that way that is clear and intelligible. We know that simplification can achieve a great deal and very recently the Office of Information and Regulatory Affairs has issued a call to all agencies to reduce reporting burdens on small business and to eliminate unjustified complexity. We hope to have good results in the near future.

This pragmatic, cost effective, evidence-based approach to regulation has informed our best practices for the past two and a half years. I

don't know if you saw, but highway deaths in the United States are down to their lowest level in 60 years. That's a statistic, but human reality is that there are a lot of people, a significant number of people, who are alive today in the United States as a result in part of regulatory requirements that have encouraged safer practices and made cars less likely lethal if things go wrong.

We've also promoted airline safety while protecting passengers from tarmac delays, overbooking, and hidden charges in large part through disclosure requirements. We've issued a rule that was long stuck sharply reducing the risk of salmonella from eggs, eliminating over 70,000 cases of illness each year.

We've dramatically increased the fuel economy of the fleet, thus promoting energy independence while saving consumers a lot of money. And we've taken steps to protect against air pollution that kills thousands of people every year. At the same time, and there is absolutely no contradiction here, this is the effort to go beyond the bad question, the less or more question, at the same time we are eliminating unnecessary regulatory burdens and tens of millions of hours in red tape.

I noted that the benefits of regulation in this Administration have far exceeded the cost. During its first two years, the net benefits of regulations are \$35 billion, over ten times the corresponding figure in the first two years of the Bush Administration and over three times the corresponding figure in the first two years of the Clinton Administration.

But our goal isn't just to have a one shot look back plan and to

have guidance by executive order for new rules. What we're seeking to do is to change the regulatory culture by constantly exploring, in empirical terms, what is working and what isn't.

If you look over the plans, you will see a number of agencies have made commitments, long term commitments, to careful advanced analysis, including the use of randomized controlled experiments. If you look through the plans you'll also see that agencies are creating offices and teams to continue to review their rules to make this a self sustaining endeavor, not just an event.

The regulatory look back and the comment period now in progress is unquestionably a defining moment. But in terms of using the regulatory system in a way that protects health and safety while also promoting innovation, it's just the start. And my hope is that this process will inaugurate a broader, less polarized, more sensible, more evidence based conversation about how we might promote economic growth and job creation while protecting the health and safety of the American people.

A number of years ago, actually a couple of centuries ago, a little more than that, Alexander Hamilton inaugurated for a trio of authors another conversation, an admittedly much larger one, with a series of short essays that have come to be known as the Federalist Papers.

The Federalist Number One started, in Hamilton's words, with a reference to the historic moment in which the soon to be nation found itself. It wasn't quite a nation yet. "It has been frequently remarked that it seems to have been reserved to the people of this country by their conduct and example to

decide the important question whether societies of men are really capable or not of establishing good government from reflection and choice or whether they are forever destined to depend for their political constitutions on accidents and force.”

Of course the current process does not have anything like the momentousness of the decisions made by “We, the people,” in the late 1700s. But the process is also in its way an effort not to depend on accident and force, but to promote good government by reflection and choice. In that sense it is, in its more modest way, an effort to honor their example. Thank you.

MR. ALTMAN: I want to thank again Professor Sunstein for that set of remarks which is very useful in our context. We’re going to go right to the next panel. There is no break. That’s why Christina is hastening up to the stage here and kindly remain in your seats while we check the agenda item for this morning.

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I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

/s/Carleton J. Anderson, III

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