

REGULATION REWIND



Photo: Jill Weiser

CONGRESSMAN ADRIAN SMITH

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The American people have spoken, and the power structure in Washington, D.C., has been turned on its head.

With Republicans holding the House, the Senate, and now the presidency, we will have a unified government in 2017 which can work to reverse many of President Obama's overreaches and pursue greater freedom and opportunity for all Americans.

The Obama administration's endless roll of red tape has choked our job creators, and President-elect Donald Trump has extensively discussed the need to roll it back.

Since 2014, I have been working on my Regulation Rewind initiative to fight government overreach. With the help of Nebraskans sharing their stories with me about how regulations have impacted them, their families, their businesses, and their communities, I have taken action on many legislative solutions to cut through unnecessary and harmful red tape.

Reducing the burden of overregulation on Nebraskans is a top priority for me. Throughout this report, you will read about the successes we have had blocking the Obama administration's regulatory agenda. It will be refreshing to work with the incoming Trump administration on regulatory reform and policies to encourage economic growth and opportunity in America.

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GROWING OPPORTUNITY FOR

NEBRASKA AGRICULTURE



The efficiency of our producers has made Nebraska's Third District the top-producing agriculture district in the country. As founder and co-chairman of the Modern Agriculture Caucus, I am committed to promoting sound policies to help producers do what they do best: feed the world.

By getting the government out of the way of producers' success, we can harvest greater opportunity at home and abroad.



BLOCKING WOTUS

The Environmental Protection Agency's (EPA) Waters of the U.S. rule, or WOTUS, threatens private water rights by increasing the federal government's regulatory jurisdiction to everything from ditches to prairie potholes. Not only would this rule impact farmers and landowners, but it would also impede the ability of local governments to make decisions for their communities.

Nebraskans are rightfully concerned WOTUS would severely harm our agriculture economy by increasing costs and uncertainty for producers, who are already great stewards of the land. Washington bureaucrats should never have control over the puddles and irrigation ditches on rural farmers' property.

Immediately after the rule was finalized in 2015, I introduced a resolution to block WOTUS under an expedited process created by the Congressional Review Act. Companion legislation sponsored by Senator Joni Ernst of Iowa passed the House and Senate in January 2016, but it was unsurprisingly met with a veto by President Obama.

In mid-July, the House spent numerous late nights working on the Department of the Interior, Environment, and Related Agencies Appropriations Act, known more simply as the Interior bill. This legislation sets the budget for the Department of the Interior and its related agencies, including the EPA. One of the provisions in this bill blocked funding for WOTUS.

As the courts considered the legality of WOTUS, a stay was placed on the rule to prevent its implementation. President-elect Trump has been vocal about his plans to eliminate WOTUS.

MORE CHOICES FOR CONSUMERS AT THE FUEL PUMP

Ethanol provides consumers with cost-effective choices at the pump, and retailers should have the opportunity to market more options to meet fuel demand.

EPA regulations related to the volatility of motor vehicle fuel currently inhibit E15 fuel sales during the summer months. More than two decades ago, the EPA provided a waiver from these regulations to E10, but E15 has yet to receive the same relief. Interestingly, E15 is cheaper and less volatile than E10.

I have introduced legislation to expand the waiver and allow E15 to be sold year-round, which would help diversify our fuel supply, increase consumer choice, and promote American energy independence.



SMITH'S BILL FIGHTS
FOR E15 YEAR ROUND



PROTECTING ACCESS TO ANHYDROUS AMMONIA

In May, I introduced a bill to help producers maintain access to anhydrous ammonia, the most common source of nitrogen fertilizer. My Fertilizer Access and Responsible Management (FARM) Act was designed to block new requirements issued by the Occupational Safety and Health Administration (OSHA) for anhydrous ammonia storage.

OSHA's rule change would have impacted approximately 3,800 agriculture retailers and cost the industry more than \$100 million to comply. Many small retailers would have been forced to stop selling anhydrous ammonia altogether, limiting supply and driving up costs for producers.

At the end of September, the judicial branch weighed in. The D.C. Circuit Court of Appeals blocked OSHA from moving forward with its regulations, ruling the agency acted illegally by not giving retailers and producers a chance to submit comments.

“Congressman Smith’s efforts to stop the implementation of these misguided OSHA rules that would add millions of dollars in new costs to Nebraska anhydrous retailers, and thus Nebraska farmers, are truly appreciated.”

- Steve Nelson, Nebraska Farm Bureau Federation president

Farmers and ranchers dedicate themselves daily to producing high-quality food, but ideologically-motivated activists are working to take meat off the menu in institutions across the country.

Now, the U.S. military is included on their list of targets. The U.S. Coast Guard Academy is an example of where this ideology has gained a foothold, cutting meat consumption among cadets by 10 percent over the last three years largely due to the advocacy of interest groups.

Meat contains vitamins and nutrients not readily available in a plant-based diet. Given the rigorous training demanded of our military men and women, they need and deserve to have all nutritional options available to them.

As the House considered the defense appropriations bill in June to fund our military, I offered an amendment to ensure meat remains a dietary option for U.S. troops by prohibiting the Department of Defense from excluding meat from its food service program manual.

KEEPING MEAT ON THE MENU

This amendment did not inhibit individual service members from choosing a vegetarian diet, and it also did not impact the military's ability to meet those dietary needs. It simply ensured there is a meat option available to our troops each day.

I am not willing to allow activist groups to tell military members they cannot enjoy a burger or steak on certain days of the week.

My colleagues agreed our military personnel should be able to make their own nutritional choices, and my amendment passed the House. I will continue to fight political extremism and misguided attacks on agriculture with sensible legislation, including keeping meat on the menu.



Photo: PanhandlePost.com

ENSURING ACCESS TO QUALITY

HEALTH CARE

One of the greatest challenges we face in our country, especially in rural areas, is access to quality health care.

Unfortunately, the President's health care law and the continuous flow of red tape from federal agencies has threatened the ability of Americans to receive the care they need.

Throughout the Obama presidency, one of my top priorities has been pursuing patient-centered solutions while fighting costly regulations and failed policies.

RELIEF FROM OBAMACARE CO-OP FAILURES

Hundreds of thousands of Americans have lost their insurance due to the collapse of Obamacare's Consumer Operated and Oriented Plans, or co-ops.

Using more than \$2 billion in federal loans, 23 co-ops were created under Obamacare. Now, 17 have closed or are in the process of closing, with the remaining six also struggling to remain solvent.

Many Americans were forced to purchase insurance through the co-ops after losing their original plans due to Obamacare's implementation, only to lose their insurance again due to co-op failures. These consumers have two options: quickly find other coverage and start over on their deductibles, or go without insurance and face a possible Obamacare tax penalty.

CoOpportunity Health, the first co-op to close, left 120,000 Nebraskans and Iowans without coverage. In February 2015, I introduced a bill to protect taxpayers from having to pay Obamacare's individual mandate penalties if they lost their insurance in the wake of a co-op closure. On September 27 of this year, the House passed my bill in a bipartisan vote.

The final legislation, known as the **CO-OP Consumer Protection Act**, exempts taxpayers from the individual mandate for the remaining months within the calendar year in which their co-op insurance plan was cancelled. It applies retroactively to individuals who lost coverage after December 31, 2013, including those in Nebraska and Iowa who lost plans sold by CoOpportunity Health.

Pam from Minatare lost her insurance three times in a little over a year. First, the plan she had prior to Obamacare which covered her pre-existing condition was cancelled. In its place, she chose a plan from CoOpportunity Health, which CoOpportunity phased out after one year in an effort to remain solvent. Finally, after she selected a second CoOpportunity plan, it was terminated when the co-op formally shuttered.

Melissa of Hartington wrote to me the day after Christmas in 2014 concerned her family's CoOpportunity plan was ending in early 2015 and they, including her child with medical needs, would find themselves paying a deductible twice or paying the individual mandate penalty for part of 2015, neither of which they could afford.

Americans who lost their health insurance through no fault of their own deserve certainty, time, and flexibility, rather than having to take their chances within the federal bureaucracy to avoid paying a tax penalty.



ACCESS TO RURAL HEALTH CARE

Long distances between facilities and a shortage of doctors make access to health care in rural America challenging enough without the heavy hand of the federal government.

Physician supervision rules require a physician's presence and supervision over nearly all routine procedures administered in hospitals, which can be especially burdensome for rural hospitals with fewer doctors and resources. The medical professionals who practice at these facilities, including doctors, nurses, physician assistants, and nurse practitioners, know best which procedures can be safely performed and which cases should be transferred. It has become an annual ritual for Congress to pass legislation to delay this arbitrary regulation.

In November, the House passed the 21st Century Cures Act, which contained my language requiring the Medicare Payment Advisory Commission (MedPAC) to report on the economic and staffing impacts of physician supervision requirements on rural hospitals. Based on my discussions with Third District hospitals, I expect MedPAC's findings will make a strong case for repealing this regulation. The 21st Century Cures Act also passed the Senate and has been signed into law by the President.

The 96-hour rule requires physicians at Critical Access Hospitals to certify at the time of admission Medicare and Medicaid patients will not be there more than 96 hours. Otherwise, the hospital must transfer the patient or face non-reimbursement. I have introduced the Critical Access Hospital Relief Act to remove the 96-hour precertification requirement for patients at Critical Access Hospitals.

HELPING HOSPICE PATIENTS

Medicare's hospice benefit provides in-home, palliative end-of-life care for beneficiaries diagnosed as having six months or fewer to live. As part of the benefit, the patient may also choose to continue seeing his or her own physician. However, because federally qualified health centers and rural health clinics are subject to a separate payment structure, physicians they employ are not eligible to serve hospice patients. I am an original cosponsor of the Rural Access to Hospice Act to help hospice patients keep their own doctors.

FLEXIBILITY FOR INDIAN HEALTH SERVICE

Due to ongoing safety concerns, the Centers for Medicare and Medicaid Services shut down various facilities at the Indian Health Service hospital in Rosebud, South Dakota, including the emergency room. Because of this closure, patients have been rerouted to the next closest hospital, including many to Cherry County Hospital in Valentine. This creates hardships both for patients and their families, and for small rural hospitals doing their best to serve an expanded patient population. I am an original cosponsor of Rep. Kristi Noem's HEALTHH Act to lift regulations on IHS and provide them greater flexibility to meet patients' needs. This bill passed the Ways and Means Committee in September.

The Second Amendment guarantees the right to keep and bear arms.

This right is important for personal protection as well as for sportsmen, hunters, and collectors.

Above all, the Second Amendment must be preserved as an essential safeguard for American freedom and democracy.

DEFENDING

SECOND AMENDMENT RIGHTS

In January 2016, the FBI announced it had stopped processing appeals for individuals who were inaccurately denied the right to own a firearm by the National Instant Criminal Background Check System (NICS). In response, I cosponsored the Firearm Due Process Protection Act, which requires action on NICS appeals within 60 days and requires the FBI to report to Congress annually on NICS appeals statistics. The bill has been referred to the House Judiciary Committee for further consideration.

In July, the Department of State issued a guidance which would require small gunsmiths to register under the International Traffic in Arms Regulations (ITAR). To register, these gunsmiths would have to pay an annual fee of \$2,250. Since many gunsmiths are part-time hobbyists who work to improve the accuracy of their own and their friends' firearms for hunting and sport shooting, the \$2,250 fee is enough to force them out of business.

ITAR is administered by the Department of State to allow the government to rightly keep track of who is manufacturing and exporting military-grade weapons. However, the small gunsmiths caught up in this new guidance are not manufacturing military-grade weapons and therefore should not be subject to ITAR. For this reason, I joined 116 of my colleagues in sending a letter to Secretary of State John Kerry requesting the guidance be immediately rescinded. I also am an original cosponsor of the Export Control Reform Act to transfer regulatory responsibility for non-military-grade firearms from the Department of State to the Commerce Department, to be regulated as commercial businesses.

President Obama also proposed including Social Security beneficiaries with representative payees in the National Instant Criminal Background Check System (NICS). Struggling to manage one's finances alone does not mean an individual should lose his or her Second Amendment rights. Last year, I joined my Ways and Means colleagues in writing to the Social Security Administration (SSA) to oppose this misguided proposal. I am also an original cosponsor of the Social Security Beneficiary 2nd Amendment Rights Protection Act to block SSA from implementing this proposal.

PROMOTING

ENTREPRENEURSHIP

In Nebraska, more than 167,000 small businesses employ nearly 400,000 people. This spirit of entrepreneurship has been a driving force throughout our country's history, leading us to discoveries which have added efficiency, comfort, and productivity to our lives.

Unfortunately, the red tape rolling out of Washington over the past eight years has choked our job creators. Regulations cost small businesses an average of \$11,000 per employee each year.

In my role on the Ways and Means Committee, I have the opportunity to work on reforming our tax code and reducing burdensome regulations to encourage economic growth.



PROTECTING EMPLOYEES' HOURS AND WAGES

On May 18, 2016, the Department of Labor issued its final rule regulating overtime pay, raising the threshold under which salaried employees qualify for overtime pay from \$23,660 to \$47,476 per year and setting it to automatically increase every three years. Many employers are concerned an increase this large will force them to reduce employees' hours, move some employees from salaried to hourly status, or cut wages in order to comply.

I continue to oppose the rule and have cosponsored legislation to stop this executive overreach. In November, a Texas judge issued a preliminary injunction against the rule. This decision placed the rule on hold and will enable the Trump administration to modify or block it.



PRESERVING ACCESS TO FINANCIAL ADVICE

The Department of Labor (DOL) has attempted to use its authority over certain pension and retirement plans to change the rules for how investment advisors nationwide provide advice to clients. The most significant change DOL has proposed, known as the fiduciary rule, would require the vast majority of advisors to begin charging a percentage of fees to investors, no matter how small, fundamentally changing the marketplace and excluding small investors from savings opportunities.

I joined in sending several letters to DOL raising concerns about this proposal and supported Rep. Peter Roskam's SAVERS Act to block the proposal and provide alternative methods of ensuring financial advice is provided legally and ethically. Despite massive public opposition, DOL finalized its proposal on April 6, 2016.

HELPING

RURAL AIRPORTS

Commercial air service is crucial to rural communities, but federal regulations have threatened small airports in Nebraska and around the country.

In July, the House and Senate passed legislation to reauthorize the Federal Aviation Administration (FAA) through September 2017.

My **Small Airport Regulation Relief Act** provision was included in the final bill to ensure rural airports get the relief they need from pilot regulations, which have led to a shortage of pilots and subsequent flight cancellations. The rising number of cancelled flights has prevented some Nebraska airports, such as Scottsbluff, North Platte, and Kearney, from meeting the requirements to receive funding for infrastructure and safety projects, even though they qualified in the past.

Under my provision, these airports will be able to use enplanement numbers from 2012 – before the regulations took effect – to qualify for needed funding while we work on a lasting solution to the pilot shortage.

The FAA bill also established a working group on improving air service to rural communities. Specifically, the working group is tasked with determining whether current federal funding for small airports is sufficient and effective, as well as examining strategies to train and retain pilots in rural areas. The working group is required to submit its findings within one year to allow recommendations to be incorporated into a longer-term FAA bill.

Though rural airports are currently feeling the worst impacts from the pilot shortage, it will likely become an issue for urban and even international airports in the coming years considering regional airlines serve as feeders for larger airlines. I am glad the House and Senate recognize the seriousness of this situation and made addressing the shortage a priority of this bill.

“We are thrilled to see Congress vote on the FAA bill, which is dear to our hearts. Rural airports have been vastly impacted by the change in the law on airline pilot hours that took place in 2013. There is a provision that will help communities in Nebraska, including Scottsbluff, Kearney, and North Platte, continue to receive Airport Improvement Program payments. We appreciate Senator Fischer’s and Congressman Smith’s efforts on behalf of Nebraska and are excited to see this legislation signed into law.”

- Don Overman, Western Nebraska Regional Airport Authority Board



SERVING OUR VETERANS



In 2014, it was widely reported at least 40 veterans had died while awaiting care from the Department of Veterans Affairs (VA).

The severe mismanagement of the VA was due in part to difficulties involved with making necessary staffing and organizational changes.

Because these personnel issues are ongoing, I cosponsored the VA Accountability First and Appeals Modernization Act, which makes it easier to remove VA employees based on poor performance or misconduct and reforms the process of handling whistleblower cases at the VA. The bill passed the House in September.



We can never adequately express our gratitude for the sacrifices made by Nebraska's veterans. As co-chair of the Rural Veterans Caucus, I will continue working to ensure they have access to the care and resources they deserve.

KEEP IN TOUCH

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Background photo: Ashley Haack

To stay up to date with what I'm working on in Nebraska and Washington, D.C., be sure to add your name to my e-newsletter list at AdrianSmith.house.gov/Newsletter.