

**Post-Hearing Questions for the Record
Submitted to Mr. Neil Eisner
From Chairman James Lankford**

***“Examining Federal Rulemaking Challenges and Areas of Improvement Within the Existing
Regulatory Process”***

Thursday, March 19, 2015

**United States Senate, Subcommittee on Regulatory Affairs and Federal Management
Committee on Homeland Security and Governmental Affairs**

1. Under Perez v. Mortgage Bankers Association, what would prevent an agency from revising an interpretive rule to a rule of legislative substance, where the resulting rule should be subject to notice-and-comment rulemaking?

Answer: Agencies must follow the “notice-and-comment” procedures in the Administrative Procedure Act to issue a “legislative” rule, one that has the “force and effect of law.” If an agency revises an interpretive rule without using the “notice-and-comment” procedures, the resulting document would not be a legislative rule. There are many informal actions that could stop an agency from trying to enforce an interpretation as if it had a legislative effect (e.g., complaints to a higher government official), and a well-run agency would consider the problems that would be created by an adverse court decision. Ultimately, however, judicial review may be the only way to prevent an agency from enforcing an interpretation as if it were a legislative rule.

2. During your tenure at the Department of Transportation, did you find negotiated rulemakings to produce better, more efficient rules? If so, please illustrate with an example.

Answer: Yes, negotiated rulemaking did produce better, more efficient rules. A good example is the first one that the Department of Transportation conducted, a Federal Aviation Administration (FAA) rulemaking on flight and duty time limitations for cockpit crews. Before trying negotiated rulemaking, the FAA had issued two notices of proposed rulemaking; both were very controversial, met significant opposition from different regulated entities, and were withdrawn. The agency then used negotiated rulemaking and successfully developed a final rule. Since retiring from my Federal government position, I have twice worked as a facilitator on Department of Energy negotiated rulemakings; my experience there has further convinced me that negotiated rulemaking can be a very effective tool if used appropriately.

3. When you developed a rule through negotiated rulemaking, how did you ensure that the stakeholders partaking in the negotiation represented diverse perspectives?

Answer: It is a basic tenet that negotiated rulemaking should not be used if the agency cannot ensure that the diverse perspectives can be adequately represented on the negotiating committee.

At the Department of Transportation, we used a multi-step process to help ensure we would have representation of all of the affected interests:

- Before making a decision to proceed, the agency would preliminarily identify the interests affected and organizations, companies, individuals, etc. who the agency thought could adequately represent those interests.
- The agency would then use a neutral convenor to talk with each of the potential representatives and also ask them if they could identify other interests or necessary representatives for the convenor to talk to.
- The convenor would then submit a report to the agency on, among other things, whether he or she believes all affected interests can be effectively represented and, if so, by whom.
- If the agency decides to proceed, it would issue a public notice on its preliminary thoughts about using negotiated rulemaking, including the issues, affected interests, and a list of representatives. It also would ask for public comment on all aspects of the matter, including whether additional or different representatives are necessary.
- After public comment is addressed, the agency would decide whether to proceed and, if so, whether changes are necessary. Additional representatives have been added as a result of public comments.
- Because the negotiated rulemaking meetings are open to the public under the Federal Advisory Committee Act, the agency would also stress that affected individuals may attend the meetings (and on-line participation is possible), may be given opportunities to address the committee, and may consult with the members of the committee that are representing their interests. The agency would also stress to the representatives that they represent their interests, not just their particular employer.

The Department has conducted a number of negotiated rulemakings, and I am not aware any complaints that there was a perspective that did not have representation.

4. During your time at the Department of Transportation, what were the differences, roughly, in personnel and resources allocated to the promulgation of new rules, versus personnel and resources allocated to retrospective review and repeal of existing rules?

Answer: My perspective was limited in that I did not know or observe all the people working on rulemaking in the Department, and I never saw any studies that identified or provided data on how personnel or resources were allocated. It is also difficult to estimate the amount of time agencies spend evaluating the effectiveness of their existing rules as part of their daily implementation activities. Based on my experience at FAA and for the American Bar Association study I worked on and noted in my prepared remarks, I would estimate that agencies like FAA and the predecessor of the Pipeline and Hazardous Materials Safety Administration, spent a greater proportion of their time and resources on reviews in the 1970's and 1980's than they do now, and those hours and resources were substantial but well less than 50 percent of their

regulatory hours and resources. In addition, I believe there are significant differences among agencies, at least partly due to appropriated resources. For example, I believe NHTSA has specific budgetary resources supporting the excellent reviews it does on the effectiveness of its existing rules. The allocation of agency time and resources can also vary significantly from year to year. For example, recent Administrations have periodically required short-time frame reviews of all of the agencies' existing rules; in order to effectively comply, the agencies may have to devote almost 100 percent of their regulatory personnel to the project. Similarly, new authorizing statutes may impose deadlines necessitating moving resources from retrospective reviews to the preparation of new rulemakings. Overall, I think that even an agency with a plan to regularly review all of its rules over a set time period such as five or ten years would devote much less than half of its time and resources to retrospective reviews, perhaps in the neighborhood of 10 percent.

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1. The Obama Administration has made significant efforts to promote a culture of retrospective review throughout the executive agencies. We have seen agencies propose and finalize rules which would relieve the burden of paperwork hours, and create financial savings for both the government and business. On March 17, 2015, executive agencies turned in their updated retrospective review plans to the Office of Information and Regulatory Affairs, presenting regulations they are in the process of and planning to update.
 - a. In your opinion, how is the current retrospective review process working? Are we focusing enough funding and effort to allow agencies to target those regulations in need of change?
 - b. What holes in the system still need to be filled?
 - c. What do the agencies need to get to a position where they are performing this review efficiently and effectively on a permanent basis?

Answer:

- a. From what I have seen of the Obama Administration effort, it is focusing attention on the need to perform retrospective reviews and that has helped identify some necessary and important fixes. That is valuable. However, it can also force agencies to try to do too much in too little time, ineffectively using limited agency resources and severely affecting agencies' efforts to meet other requirements. Moreover, effective reviews can take considerable time and money, and the agencies have not been provided with the necessary resources. In addition, the efforts of recent Administrations to periodically impose short-term requirements to review all existing rules can have significant adverse effects on the efforts of some agencies to have effective programs for thoroughly reviewing all their rules on a regular basis.
- b. The biggest hole is the lack of adequate funding. In addition, many agencies appreciate the need for retrospective reviews. However, even the best of agencies may also need help establishing the culture for reviews, especially among senior officials who may focus on creating something new (their project) rather than fixing something old (someone else's project).
- c. To get reviews on a permanent basis, the agencies need the resources. Perhaps the best way to do this would be to provide appropriations that can only be used for

retrospective reviews. The agencies could be required to report as part of the budget process how they effectively used the prior year's money as well as what they plan for the next year. Agencies also need the ability to effectively evaluate costs and benefits of existing rules. To do this, the agencies may need data from the regulated entities. This, in turn, may require some necessary balancing with the objectives of the Paperwork Reduction Act, which may require Congressional support.

2. Towards the end of your testimony, you described agency collaboration on rulemaking. You mentioned that DOT worked with many other rulemaking departments and agencies. It appears these interagency relationships lead to more productive rulemaking and the exchange of best practices. What can Congress do to promote these relationships between agencies?

Answer: Some collaboration results from statutory or executive order requirements, but many agencies voluntarily collaborate because they see the benefits. Limited resources may be an obstacle, especially when there is pressure on the agency to act quickly. So Congress should consider both these constraints when imposing deadlines. Another possible obstacle involves “turf” wars, where agencies have some overlap or disagree on the limits to their authority. Clarification of the legislation would help, when that is possible. Giving OMB some oversight and the necessary resources could help in this area, especially where common rules could be quite valuable but difficult to achieve because of the number of agencies involved.

- a. Where are the gaps in information sharing between agencies?

Answer: There are probably many areas where agencies do not know they have overlaps in reporting requirements. To the extent that the regulated industries tell the agencies about this, perhaps it is not being brought to the attention of the officials who would want to or could fix the problem. Congress might be able to address this by requiring that proposed or final rules or paperwork forms provide the name of a “paperwork” official who would respond to this. Alternatively, Congress could provide OMB with the resources necessary to do a government-wide study of the problem and direct necessary fixes.

3. Agency retrospective review of regulations is something that we have heard a lot about. In your testimony, you mention that the DOT established retrospective reviews of existing regulations. Can you briefly describe the DOT retrospective review process?

Answer: In 1998, DOT developed an organized and open approach to its retrospective reviews. With some limited exceptions explained in its public plan, the Department published a schedule for all of its rules (based on its parts or sections in the Code of Federal Regulations) for review year-by-year over a 10-year period. The plan advised the public how they could comment on the

schedule and participate in the reviews and provided annual, but very brief updates of the reviews in the semi-annual Regulatory Agenda. In 2008, the Department published a new, 10-year schedule for all of its rules for review. Periodic retrospective review requirements imposed by different Administrations as well as limited resources affect the implementation of the 10-year plans, but the Department has tried to work within those constraints. Further details on the retrospective reviews can be found at <http://www.dot.gov/regulations/dot-retrospective-reviews-rules>.

4. In your testimony, you mention that before Congress considers changing the Administrative Procedure Act (APA), there are certain circumstances that we should keep in mind which happen at the agency level and impact the outcome of regulations. Specifically, you go on to say outside influences or political appointees with a final decision making authority could be the reason(s) for an agency to handle a regulation in a less than satisfactory manner. From where we sit, my colleagues and I are not usually privy to internal agency politics. Do you have any thoughts on how members of Congress can approach regulatory decisions that are the result of political and outside influence?

Answer: This type of problem is difficult to effectively address. The best I can recommend is that members be aware of it and consider the effects of any legislative efforts to impose more requirements. The President, directly or through other appointed individuals, has the power to modify or stop agency-level decisions. He may have good justification for doing that. However, those who disagree with the final decision may think, for example, that it was based on an inadequate analysis and want to impose additional requirements on agencies. The initial agency decision and the underlying analysis may have been very well done. My concern is that imposing additional burdens on the rulemaking process may not fix the problem and may increase the difficulty of issuing “good” rules. Even “openness” requirements that may help the public better understand the internal “politics” -- such as the Executive Order 12866 requirements that any changes made during the OMB rulemaking review process be noted in a public document -- can be avoided.

**Post-Hearing Questions for the Record
Submitted to Ms. Pamela Gilbert
From Senator Heidi Heitkamp**

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 - a. In your opinion, how is the current retrospective review process working? Are we focusing enough funding and effort to allow agencies to target those regulations in need of change?

ANSWER:

While I appreciate the need to update regulations to relieve unnecessary burdens on government and the public, I am concerned that the process of retrospective review can divert badly-needed resources away from the health and safety mission of the agencies. If Congress and the Executive Branch continue to require federal agencies to conduct retrospective reviews on an ongoing basis, federal agencies should be fully funded and staffed to comply with this mandate to ensure that it does not impede the agencies’ ability to promulgate new regulations and meet their statutory obligations.

- b. What holes in the system still need to be filled?

ANSWER:

In addition to the lack of funding for retrospective review that I reference above, I also believe that there should be more emphasis on agencies identifying regulatory weaknesses or gaps that need to be strengthened as well as identifying specific regulations that should be improved to be more effective at achieving statutory aims. While much of the retrospective review effort has been premised on the need to repeal rules, agencies should be encouraged on an equal basis to assess and strengthen old rules that require updating to ensure they provide adequate public protections.

- c. What do the agencies need to get to a position where they are performing this review efficiently and effectively on a permanent basis?

ANSWER:

In order to perform the review efficiently, agencies need dedicated funding that is specifically allocated to retrospective review. In order for the review to be effective, federal agencies should use notice and comment rulemaking, as the Obama administration is currently doing. In this way, the retrospective review process is consistent with the process for promulgating most new rules. It also provides an opportunity for the public to engage in the process. Congress should avoid codifying retrospective review efforts in ways that would short-circuit or avoid entirely the notice and comment rulemaking process.

2. You were the Executive Director of the CPSC during the Clinton Administration. When we look at the regulatory impact on business, we classify their regulatory burden in terms of man hours and costs incurred. In your estimation, how many man hours did it take the CPSC to meet their statutorily required review and analysis, what were the costs incurred to meeting these standards?

ANSWER:

I do not know the number of hours spent or the costs incurred by CPSC in meeting its statutory requirements. I do know that those requirements often mean that the CPSC cannot perform its mission in a timely manner. For example, the agency has been trying to enact a furniture flammability standard since CPSC was founded over 40 years ago. In a more recent example, it has been almost four years since the Commission voted to begin an Advanced Notice of Proposed Rulemaking on a relatively straightforward standard to prevent lacerations and amputations on table saws, and still the agency has not even issued a proposed rule, which is only the second step in its three-step rulemaking process. It is clear that the CPSC's onerous regulatory burdens make it difficult, and in some cases impossible, for CPSC to enact critical safety measures to protect consumers.

3. During your testimony you discussed the need to streamline the regulatory review and analysis process. We hear similar concerns from the business community from a slightly different angle. One idea you touched on was the American Bar Association's recommendation in 2008 that the regulatory review framework be moved from the current patchwork of statutes to one coordinated structure.
 - a. If we were to go down that road, how would you approach the task, what are the first moves?

ANSWER:

I would explore using as a model some of Congress's current efforts to streamline regulatory review requirements for certain agencies or in certain regulatory contexts. For example, your committee has recently passed legislation that would streamline the permit

approval process for infrastructure and energy projects. That model could prove instructive for streamlining notice and comment rulemaking. I would also explore ways to remove layers of regulatory review rather than add additional layers. It would be helpful to place hard caps on the length of regulatory reviews at the Office of Management and Budget, which frequently misses the 90/120 day deadline for review specified in Executive Order 12866. Similarly, to address delays and paralysis in the regulatory process, Congress could consider measures to allow regulations to proceed to the next stage of the rulemaking process by default once a certain period of time has elapsed. Finally, Congress should look for ways to potentially curtail judicial review of regulations rather than expand it.

- b. How do we ensure that, in the quest for a perfect rulemaking framework, we do not miss common sense improvements that would make today's flawed system better?

ANSWER:

That is an excellent question. Some of the proposals I mentioned in my answer to (a) above could be a good start for making common sense improvements.

- c. Do you envision a structure where we would cherry pick sections from the current statutes, or would you advocate a start-from-scratch approach?

ANSWER:

I do not believe that it is necessary to start from scratch by replacing the Administrative Procedure Act (APA). Instead, there should be a re-appraisal of the myriad statutes adopted after the APA that have significantly lengthened rulemaking requirements for agencies and harmed agency efficiency and effectiveness.

- d. What changes are needed for independent agencies regulatory process? How do we ensure they are effectively managed in this process?

ANSWER:

I believe Congress should proceed cautiously when seeking to change the rulemaking process at independent agencies. In particular, rulemaking at independent agencies with multiple-member commissions, such as the CPSC, necessarily involves finding consensus and approval from a majority of commissioners. Broad rulemaking reforms, such as requiring the Office of Management and Budget (OMB) to review independent agency regulations, would significantly and harmfully disrupt the commission decision-making structure. Further, requiring OMB to review independent agency rules would politicize the agencies and sacrifice their very independence by subjecting their rules to a regulatory review process that is designed to align regulations with White House regulatory priorities.

4. I believe that there is a place for the review of pending regulations in our rulemaking process. In order to ensure that our regulations promote efficiency and are effective at driving to the root of

problems without overly encumbering the regulated party. It is important to have safeguards against poorly written regulations. However, there can be too much of a good thing. Excessive or unneeded review becomes inefficient and ineffective.

- a. Regarding rulemaking review and cost benefit analysis, how do we determine where the line between inefficient and efficient is?

ANSWER:

Cost-benefit analysis can result in significant inefficiencies for agencies. First, imposing detailed requirements for cost-benefit analysis by statute leads agencies to expend considerable time and resources on highly speculative determinations such as the potential job impacts due to a regulation or indirect costs of a regulation. If such requirements are in turn subject to court challenge and judicial review, as is often the case when imposed by statute, then the inefficiencies for agencies become even greater. Second, cost-benefit analysis should not be dispositive or the sole grounds upon which agencies base their regulatory decision-making. In other words, agencies should not be required to meet a cost-benefit test when putting forth new regulations. This would make the rulemaking process far more inefficient as agencies would be justifiably concerned that any cost-benefit analysis produced to meet a cost-benefit test would result in significant litigation risk given that the methodology underlying regulatory cost-benefit analysis is highly subjective and involves malleable assumptions.

- b. In your opinion, where do we move from effective management and oversight into a situation where we are doing more harm than good?

ANSWER:

I believe that overly prescriptive analytical requirements for agencies, particularly in a “one-size-fits-all” approach that applies to all agencies and is judicially enforceable by court challenge, would clearly result in more harm than good.

- c. What kind of metrics could this subcommittee use in determining the potential impacts of review requirements?

ANSWER:

As I stated in my written testimony, the history of rulemaking at the CPSC is instructive in gauging the impact of regulatory review requirements. To briefly summarize, where the CPSC has developed and finalized consumer product safety rules in compliance with the extensive and lengthy rulemaking procedural requirements under the Consumer Product Safety Act (CPSA), the CPSC has only been able to produce one safety rule roughly every three and a half years. In stark contrast, where the CPSC has been directed by Congress to bypass the procedural requirements in the CPSA for certain regulations, such as most recently in the Consumer Product Safety Improvement Act, the CPSC has been able to finalize those regulations far more quickly, thereby protecting consumers as Congress intended in a more efficient manner.

In terms of assessing the impact of current review requirements, the subcommittee may wish to request studies of agencies' ability to meet statutory deadlines in promulgating regulations, and, if agencies are missing such deadlines on a consistent basis, what role review requirements play in preventing agencies from meeting those deadlines.

- d. When you looked at rulemaking as the head of an agency, what benchmarks did you use to determine that review was being performed effectively?

ANSWER:

The benchmarks we used at CPSC to determine whether we were being effective was how many lives would be saved and injuries prevented.

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 - a. In your opinion, how is the current retrospective review process working? Are we focusing enough funding and effort to allow agencies to target those regulations in need of change?
 - b. What holes in the system still need to be filled?
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Answer: Since the most burdensome regulations have large one-time compliance costs (often capital costs) when a regulation takes effect, retrospective review is typically too late to avoid the lion’s share of the burden. Thus, a strong focus on retrospective review, if it comes at the expense of softer review of new regulations, is not necessarily a wise approach. It is well known that OIRA staffing has been declining for many years and thus OIRA is not well positioned to take a central role in review of numerous labor-intensive reviews of existing regulations. Agencies have more staffing resources but little incentive to engage in a large number of retrospective regulatory reviews. What might work is a process where an independent commission nominates rules for retrospective review, and agencies perform the reviews under a judicially reviewable process. In this model, OIRA plays a more limited, coordination function. I also have sympathy with the legislative proposal that would permit new discretionary rules only if agencies are in the process of modernizing or removing an equal number of existing rules.

2. Out of the five themes that you listed in your testimony, which one or two would you advise this subcommittee to prioritize for legislative action this Congress?

Answer: My first priority would be a judicial review mechanism under the Information Quality Act for regulatory use of poor-quality information. My second priority would be a

regulatory analysis requirement for new legislation from Congress, with the Congressional Budget Office empowered to play the analytic role.

3. There has been a criticism that OIRA is not staffed at a level that is appropriate for its responsibility. Many people believe that it is understaffed. Can you speak to the staffing level of OIRA?
 - a. Should there be additional employees at OIRA?
 - b. Do federal agencies have the resources and staff necessary for the effective promulgation of quality regulation?

Answer: During the 2001-2006, my experience was that the “big” regulators in town – EPA, Labor, DOT, HHS and DHS – did not have any staffing or resources shortages regarding regulatory analysis or rulemaking. OIRA needs to be at about 60 FTE in order to oversee the new regulatory activities of the Cabinet-level agencies.

4. Your first theme focused on Congressional impact analysis prior to passing legislation. You listed Congressional Budget Office as a possible resource for conducting such an analysis. Is there another federal entity that would be appropriate or should we create a new entity?

Answer: In addition to the CBO, one could consider the GAO playing the regulatory analysis role for Congress. I would consider a completely new entity only if there were powerful arguments against an expanded role for CBO or GAO.

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1. You testified that the Securities and Exchange Commission places a regulatory burden on you, albeit indirectly, through requiring your publicly traded clients to disclose any elements of conflict minerals up the supply chain. Are there other regulations with which you must comply indirectly?

Because manufacturing is an energy-intensive practice, regulations that will increase the cost of energy significantly impact manufacturers. As an example, the Environmental Protection Agency’s (EPA) implementation of National Ambient Air Quality Standards (NAAQS) for Ozone is done through the regulation and approval of state implementation plans. The agency purports no direct effects on small entities because states are not small entities. An updated analysis by NERA Economic Consulting and commissioned by the National Association of Manufacturers (NAM) finds that EPA’s December 2014 proposed ozone rule could reduce GDP by \$140 billion annually and eliminate 1.4 million job equivalents per year. In total, the costs of complying with the rule from 2017 through 2040 could top \$1 trillion, making it the most expensive regulation ever issued by the U.S. government.

2. In your experience, have you or any of the small businesses you represent ignored a non-binding guidance document? If so, did you/they face any consequences from the agency issuing the guidance?

Manufacturers strive to comply with all requirements through both strict regulatory language and agency guidance. Failure to comply has real consequences, even with a guidance document since agency enforcement is based on such guidance. As companies, we do not have the luxury of testing legality or challenging guidance unless it threatens the existence of a firm. As a result, agency guidance is de facto the law, whether the agency intended it to be or not.

3. Would you, as a small business owner, find it meaningful if, before an agency issued a significant guidance document, they held a notice and comment period?

While manufacturers and other regulated entities would benefit from a requirement that significant guidance documents be subject to notice and comment, comprehensive reform of our regulatory system is needed if we seek to transform our regulatory system so that agencies issue smarter regulations that more effectively achieve desired outcomes. My written testimony provides a number of reforms recommended by the NAM that would improve the system through which modern rulemaking is conducted, including legislation that would impose additional requirements for the issuing of guidance documents and informal interpretations.

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 - a. In your opinion, how is the current retrospective review process working? Are we focusing enough funding and effort to allow agencies to target those regulations in need of change?

Retrospective reviews should provide agencies an opportunity to analyze, revise and improve techniques and models used for predicting more accurate benefits and costs estimates for future regulations. However, the promise of a significant burden reduction through the review of existing regulations has not materialized. Agencies highlight retrospective review “successes” that are nothing more than modifications of recently issued regulations, and many of the initiatives had been ongoing projects or the result of litigation. The Administration has laid the foundation for what could become a successful retrospective review program, but agencies must be incentivized to actually change the way they operate.

The Office of Information and Regulatory Affairs (OIRA) has been tasked with overseeing agency retrospective reviews. Congress and the Office of Management and Budget should allocate significantly more resources to OIRA. If retrospective review is a priority, then OIRA should have more resources to ensure that agencies are engaged in thorough reviews.

- b. What holes in the system still need to be filled?

New regulations are too often poorly designed and analyzed and ineffectively achieve their benefits. They are often unnecessarily complex and duplicative of other mandates. Their critical inputs—scientific and other technical data—are sometimes unreliable and fail to account for significant uncertainties. Regulations are allowed to accumulate with no real incentives to evaluate existing requirements and improve effectiveness. In addition, regulations many times are one-size-fits-all without the needed sensitivity to their impact on small businesses.

As I pointed out in my written testimony, the paperwork burden imposed by federal agencies excluding the Department of Treasury increased 62.1 percent—from 1.509 billion hours to 2.446 billion hours—in the 10 years ending FY 2013, and 82 million hours were added through agency discretion. In May 2013, George Washington University’s Regulatory Studies Center reviewed EPA’s retrospective review plan and found that, for initiatives where EPA actually quantified costs or savings, 40 percent would actually increase costs to manufacturers. This is especially troubling for manufacturers, and particularly small manufacturers, as they are disproportionately burdened by environmental regulations, and poorly designed regulations are exceptionally harmful to our abilities to expand our businesses and provide more for our employees.

- c. What do the agencies need to get to a position where they are performing this review efficiently and effectively on a permanent basis?

To truly build a culture of continuous improvement and thoughtful retrospective review of regulations, it must be institutionalized, a position aligned with the desires of the Administration to change the “culture” of how agencies regulate. One of the best incentives for high-quality retrospective reviews of existing regulations is to sunset rules automatically that are not chosen affirmatively to be continued. When issuing new regulations, agencies must include plans for retrospective review as required. A November 2014 report by the Administrative Conference of the U.S. found that no major rule it reviewed included plans for conducting a future retrospective analysis. Retrospective review initiatives undertaken by agencies should have clear and quantifiable objectives. Agencies should identify all regulatory requirements at both the federal and state level and work with other federal and state agencies of jurisdiction to streamline those requirements.

2. In terms of compliance with international, federal, state and local regulations, can you speak to instances where Marlin Steel has had to navigate conflicting regulations? If so, how did that impact Marlin Steel?

Federal regulators fail to consider cumulative burdens that are imposed on manufactures and other regulated entities. Agencies should engage in a comprehensive interagency process for effectively estimating cumulative burdens. The consideration of cumulative burdens would also provides agencies an opportunity to consider international, state and local regulatory requirements and account for those as new regulations are designed.

Because of the significant challenges facing manufacturing in the United States, federal policies must be more attuned to the realities of global competition. When considering a new regulation or reviewing existing requirements, agencies must first define the problem, which should include early participation by all stakeholders. They must engage in a bottom-up interagency analysis of how agencies use regulations, guidance and paperwork requirements to accomplish objectives. It is vital to identify all inefficiencies and determine how to eliminate efforts and processes that create no value or assist in meeting objectives. Finally, agencies must institutionalize these best

practices, including regular reprioritizations and organized abandonment of less useful methods, procedures and practices.

3. Has there been a specific incident or point in time when either a regulation or the amount of regulations posed a threat to Marlin Steel's bottom line?

Manufacturers recognize that regulations are necessary to protect people's health and safety, but we need a regulatory system that effectively meets its objectives while supporting innovation and economic growth. The cost burdens associated with poorly designed and inefficient regulations greatly harm Marlin Steel's bottom line. If I am spending money to comply with a requirement that, through poor design, is not advancing health or safety, then that money is wasted. I am not able to invest that money in my employees (through higher pay or more benefits) or newer capital that would improve worker safety or Marlin Steel's productivity.

4. What do you see as the biggest regulatory burden that businesses at all levels are facing?

Manufacturers and other businesses are often asked which regulation is the most burdensome. It is a difficult question to answer because the cumulative costs of federal, state and local regulations are extremely complex. New regulations are simply added on top of the complicated array of requirements that are already in place. The costs of poorly designed and inefficient regulations are an extra weight holding manufacturers down as we try to move forward, find new markets, grow our businesses and create new jobs. There is a failure within the federal government to truly understand the impact of regulatory requirements, such as paperwork and recordkeeping, on the public. A small manufacturer or any regulated entity in the United States should not have to be on constant guard for the next burdensome and poorly designed requirement issued by an agency. Our regulatory system should be designed to promote coordination within and between agencies, and regulations should be designed to most effectively meet regulatory objectives to minimize unnecessary burdens.