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S. Hrg. 114–241

AGENCY PROGRESS IN RETROSPECTIVE REVIEW OF EXISTING REGULATIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON
REGULATORY AFFAIRS AND FEDERAL
MANAGEMENT

OF THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

NOVEMBER 5, 2015

Available via http://www.fdsys.gov

Printed for the use of the Committee on Homeland Security
and Governmental Affairs

U.S. GOVERNMENT PUBLISHING OFFICE

99–688 PDF WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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CONTENTS

	Page
Opening statement:	
Senator Lankford	1
Senator Heitkamp	2
Senator Peters	11
Senator Ernst	13
Prepared statement:	
Senator Lankford	35
Senator Heitkamp	37

WITNESSES

THURSDAY, NOVEMBER 5 2015

Elizabeth Klein, Associate Deputy Secretary, U.S. Department of the Interior	4
Christopher Zehren, Deputy Director, Office of Budget and Program Analysis, U.S. Department of Agriculture	6
Megan J. Uzzell, Associate Deputy Secretary, U.S. Department of Labor	7
Bill Nickerson, Acting Director, Office of Regulatory Policy and Management, Office of Policy, U.S. Environmental Protection Agency	9

ALPHABETICAL LIST OF WITNESSES

Klein, Elizabeth:	
Testimony	4
Prepared statement	39
Nickerson, Bill:	
Testimony	9
Prepared statement	51
Uzzell Megan J.:	
Testimony	7
Prepared statement	45
Zehren, Christopher:	
Testimony	6
Prepared statement	42

APPENDIX

Responses to post-hearing questions for the Record:	
Ms. Klein	54
Mr. Zehren	68
Ms. Uzzell	91
Mr. Nickerson	105

AGENCY PROGRESS IN RETROSPECTIVE REVIEW OF EXISTING REGULATIONS

THURSDAY, NOVEMBER 5 2015

U.S. SENATE,
SUBCOMMITTEE ON REGULATORY,
AFFAIRS AND FEDERAL MANAGEMENT,
OF THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:34 a.m., in room SD–342, Dirksen Senate Office Building, Hon. James Lankford, Chairman of the Subcommittee, presiding.

Present: Senators Lankford, Ernst, Heitkamp, Tester, and Peters.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Good morning, everyone. This is the sixth in a series of hearings and roundtable discussions in which the Subcommittee continues to examine the issues and solutions surrounding the regulatory state. Today we will hear from witnesses representing the U.S. Department of Agriculture (USDA), the U.S. Department of Labor (DOL), the U.S. Department of the Interior (DOI), and the Environmental Protection Agency (EPA) about their agencies' retrospective review programs: their progress in reviewing existing regulations, the challenges they have encountered, their next steps, and where do we go from here?

Every President since President Carter has urged agencies to initiate a retrospective review or "look-back" of their existing regulations. In 2011, President Obama issued Executive Order (EO) 13563. Executive Order 13563 directs agencies to develop and submit to the Office of Management and Budget (OMBs) Office of Information and Regulatory Affairs (OIRA) a plan for periodic review of existing significant regulations to determine whether they should be modified, streamlined, expanded, or repealed. In 2012, Executive Order 13610 urged agencies to take action to institutionalize regular assessment of significant regulations. However, experts have questioned how rigorous or effective these efforts have been.

Retrospective review of regulations is important. Changing circumstances and technological improvements may render some regulations outdated and ineffective. Initial agency estimates of potential costs and benefits of an action can prove incorrect. Therefore, we must ensure that agencies undertake retrospective reviews of current regulations so that we know they continue to serve the

American people and consistently reflect the least burdensome option to achieve their desired result.

Because retrospective review of regulations is so important, in July, Ranking Member Heitkamp and myself proposed legislation to ensure that agencies plan for retrospective reviews from the outset. Senate bill 1817, The Smarter Regulations through Advance Planning and Review Act, requires agencies promulgating major rules to commit to a timeframe to review the regulation, a plan for that review, and the information they will collect to facilitate that review.

This is just one of the bipartisan common-sense proposals that Senator Heitkamp and I proposed in July to improve the regulatory process and make it more accountable to the American people. All three proposals recently passed through Committee with wide support.

Although we hope to strengthen retrospective reviews in the future, today we are here to discuss the current retrospective review effort and the progress agencies have made. We look forward to hearing from agency officials about their experiences and what else we can do to help facilitate these very important reviews. I appreciate our witnesses' written statements and their oral testimony that is coming in just a moment.

With that, I recognize Senator Heitkamp for her opening statement.

OPENING STATEMENT OF SENATOR HEITKAMP

Senator HEITKAMP. Thank you, Chairman Lankford, and thanks to all the witnesses. Sorry I did not get a chance to greet you earlier. We promise we are the nice Committee, me and Lankford. We just want you to know, because he told me this is your first time testifying in Congress, and so you will find out. Redheads are nicer as a group of people in general. [Laughter.]

I want to thank the chairman for organizing the hearing today and giving us the opportunity to look more closely at a very important aspect of our regulatory process: retrospective review. I am very interested in the insights of our witnesses and how to make retrospective review a stronger part of the culture at all agencies.

A key goal of mine today is to closely examine how retrospective review is working right now, what gets in the way of good retrospective review, and what are the best practices that agencies have learned. Congress and the agencies can work together to improve this process moving forward.

That is why the HSGAC Committee recently passed our bill, the Smarter Regulations Act, which I sponsored and the Chairman cosponsored. This common-sense and bipartisan bill requires Federal agencies to include, as a part of every proposed and final major rule, a framework to do retrospective review of that regulation, including a timeline. Why that is also important is it gives the regulated and the public as a whole an opportunity to weigh in on what that retrospective review should be.

If agencies do the tough thinking early on in the rulemaking process, that will ultimately save the agencies and, I believe, the Federal Government time and resources into the future. I see this as a logical idea which follows directly from the goals and ideas

about retrospective review which have been echoed by each administration since President Carter.

In reading your submitted testimony in preparation of this hearing, I am glad to see your agencies consider retrospective review to be a critical part of your regulatory missions. By making retrospective review a part of your ordinary regulatory functions, we help ensure that we have the most efficient and effective regulatory system possible.

I think we all agree, for our citizens to be able to work hard and provide for their families, for our Nation to be safe and secure, we need a responsive regulatory system that produces the highest-quality regulations. Retrospective review can help us meet that goal by improving or deleting older regulations which no longer meet the objectives of this country. That is why I am excited for today's hearing. I look forward to hearing from all of the witnesses, and I look forward to our continuing dialogue on this important regulatory issue.

Thank you, Mr. Chairman.

Senator LANKFORD. Absolutely. Thank you. At this time we will proceed with testimony from our witnesses.

Ms. Elizabeth Klein is the current Associate Deputy Secretary at the Department of Interior where she serves as the principal adviser to the Deputy Secretary. Ms. Klein joined the Department in 2010 and has also served as a counselor for the Deputy Secretary. Before joining the Interior Department, Ms. Klein was an attorney in private practice. She is a graduate of George Washington University and received her J.D. from American University.

Mr. Christopher Zehren is the current Deputy Director of Program Analysis in the Office of Budget and Program Analysis at the Department of Agriculture, a position he has held since 2005. Mr. Zehren has over 31 years of experience in the office. Mr. Zehren holds a B.S. from the University of Wisconsin-Madison and a Master of Science degree in public policy analysis from the University of Rochester.

Ms. Megan Uzzell is the current Associate Deputy Secretary of the Department of Labor where she leads departmental efforts on a range of regulatory policy and agency matters. From 2009 to 2014 she served as Deputy Assistant Secretary and Acting Assistant Secretary for the Department of Labor Office of the Assistant Secretary for Policy. Prior to joining Labor, she served as Legislative Director to Congresswoman Hilda Solis, most recently as the Legislative Director. Ms. Uzzell holds a B.A. from Drake University and a Master's degree in international affairs from George Washington.

Mr. Bill Nickerson is currently serving as the Acting Director of the Office of Regulatory Policy and Management (ORPM) within the Office of Policy at EPA. This office supports the agency's mission by participating in the development of EPA's priority regulations and policy. Mr. Nickerson previously served as the Associate Office Director of ORPM. He is a graduate of the Pennsylvania State University and holds a Master of Science degree from Oxford University and Massachusetts Institute of Technology.

I would like to thank all of you, but, Mr. Nickerson, would you please pass on my thanks to the Director as well. You were a late

fill-in. I know there were several folks at EPA that were originally tasked to do this, and some were not available and EPA did assign you to come. I know you were assigned late. This is not in your core function or what you do all the time. We do appreciate you coming, and please pass it on to your leadership as well. But I would like to thank all of our witnesses for your preparation today.

It is the custom of this Subcommittee to swear in all witnesses that appear before us, so if you do not mind, I would like to ask all of you to stand and raise your right hand. Do you swear that the testimony you are about to give before this Committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. KLEIN. I do.

Mr. ZEHREN. I do.

Ms. UZZELL. I do.

Mr. NICKERSON. I do.

Senator LANKFORD. Thank you. You may be seated. Let the record reflect all the witnesses have answered in the affirmative.

We are using a timing system today. You will see that wonderful countdown clock in front of you. But each of your written testimonies will be a part of the permanent record. You may stray from that, if you choose to, and if your agency allows you to, I should say. But you are free to be able to begin the testimony, and, Ms. Klein, we will begin with you. If you will turn your microphone on, we will receive your testimony now.

TESTIMONY OF ELIZABETH KLEIN,[1] ASSOCIATE DEPUTY SECRETARY, U.S. DEPARTMENT OF THE INTERIOR

Ms. KLEIN. Chairman Lankford, Ranking Member Heitkamp, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss actions the Department of the Interior is taking to review and improve our existing regulations to ensure that they are efficient, functional, transparent, and less burdensome.

The Department recognizes the importance of establishing and maintaining a culture of retrospective review. We have taken a number of steps to ensure that review takes place, while continuing to advance our mission of managing our natural resources to benefit all Americans, along with upholding Federal trust responsibilities to American Indians and Alaskan Natives.

Following President Obama's issuance of Executive Orders 13563 and 13610, the Department developed a robust plan to ensure that our offices and bureaus with regulatory responsibilities are incorporating retrospective review into their annual regulatory planning processes. The Department continues to make progress in fulfilling our commitment to regulatory review, and my testimony will highlight some of the efforts we have undertaken to date.

Executive Order 13563 requires agencies to develop plans to review their existing regulations. In response to this requirement, the Department published our Plan for Retrospective Regulatory Review in August 2011, which made this review an explicit and permanent part of our planning process. Each departmental bureau

[1] The prepared statement of Ms. Klein appears in the Appendix on page 39.

and office is asked to identify at least one regulation for review each year. In doing so, they are directed to consider four things: whether a rule is obsolete due to changes in the law or practice; is duplicative or incompatible with other rules; has been reviewed in the last 10 years; or is considered burdensome or unnecessarily restrictive based upon public or internal comments.

The Department also shares your goal, and that of the President, of increasing public interest and engagement in the process of improving our regulations. We recognize that stakeholders, nonprofit organizations, and the regulated public bring unique and valuable insight into our regulatory activities and may have information that is not readily available or apparent to the Department. This information can help us improve or more appropriately tailor our regulations to accomplish their intent.

The Department is working to foster greater public participation and an open exchange of ideas by seeking public suggestions and input through Federal Register notices, dedicating space on our website, and by establishing an email address dedicated to hearing from the public day or night on these issues.

In addition, many of the bureaus and offices within the Department interact with stakeholders every day through one-on-one conversations that take place in the normal course of doing business. Through this frequent interaction, stakeholders are able to share their ideas with our employees about how to make our regulations work better, and these conversations influence what rules have been put forward by the bureaus and offices for retrospective review.

Since 2011, the Department has added 32 actions for retrospective review, as reported in our semiannual progress reports, and by the end of this week, we will have completed work on 14 of those regulatory actions.

As a result of the regulatory review framework, we have removed outdated requirements, streamlined processes, and modernized how we work with the public to manage our many responsibilities. Our focus most recently has turned to regulations pertaining to Indian country in order to promote the trust relationship between Indian tribes and the Federal Government.

For example, we recently completed work on a final rule revising regulations governing the process for Federal acknowledgment of Indian tribes. Our aim was to maintain the integrity of that process while trying to reduce the extraordinarily long amount of time the process has taken in the past.

Today the Department is also announcing updating regulations for obtaining rights-of-way across Indian lands. This should increase tribal access to technology such as fiber optic lines that are vital to participation in a wired 21st Century economy and open the door to new economic development opportunities that will bolster tribal sovereignty and dignity.

We are also announcing new rules to improve access to quality housing in Indian country, and we are reviewing and updating rules to protect the welfare of Indian children in custody proceedings. By reviewing these regulations, the Department aims to address the needs of Native communities, fulfill the Federal trust

responsibility to American Indians and Alaskan Natives, and ensure our regulations are effective and efficient.

In conclusion, the Department has an obligation to manage and protect America's public lands, protect endangered species, encourage responsible development of our energy resources, preserve our national treasures for the enjoyment of this and future generations, fulfill trust responsibilities to American Indians and Native Alaskans, and develop and manage scarce water resources in the West.

In short, we do a lot, and we must do all of it in a way that works for the American public. We understand that we need to regulate in a way that is smart, efficient, effective, and not more burdensome than necessary to meet our goals. We look forward to continuing our efforts to meet these challenges.

Thank you for your time and attention. I would be happy to answer any questions you may have.

Senator LANKFORD. Thank you. Mr. Zehren.

TESTIMONY OF CHRISTOPHER ZEHREN,[1] DEPUTY DIRECTOR, OFFICE OF BUDGET AND PROGRAM ANALYSIS, U.S. DEPARTMENT OF AGRICULTURE

Mr. ZEHREN. Mr. Chairman, Ranking Member Heitkamp, and Members of the Subcommittee, I am pleased to have this opportunity to discuss the Department of Agriculture's efforts to reduce regulatory and paperwork burdens and provide easier access to USDA programs.

I am the Deputy Director for Program Analysis with the Office of Budget and Program Analysis. Our functions include coordinating the review of rulemaking subject to Executive Order 12866 and ensuring that the Secretary of Agriculture has the information needed to establish regulatory priorities.

As part of our responsibilities, we work with agencies to ensure regulations meet the analytical requirements of Executive Orders and OMB guidance governing regulatory development.

In response to recent Executive Orders on retrospective review, USDA initiated a rigorous and transparent review of its regulations. As reported in our status reports, we focused on 22 priority initiatives, 9 of which have been completed. These initiatives have reduced regulatory burden by over 475,000 hours and have the potential to save millions of dollars annually.

The most recent report, released by OMB on August 4, identifies two additional actions. One action will streamline application requirements for our Biorefinery Assistance Program and save approximately 33,000 hours per year. Another will simplify cost accounting in the Summer Food Service Program and will save an estimated 27,000 hours per year.

As this suggests, USDA's efforts to increase the effectiveness of its regulations are ongoing. Agencies continuously engage stakeholders to gather input on program operations and routinely update their regulations based on that input. Retrospective review initiatives undertaken by USDA are a natural outgrowth of this process.

[1] The prepared statement of Mr. Zehren appears in the Appendix on page 42.

Of critical importance to USDA is the periodic reauthorization of a majority of its programs. While not formal retrospective reviews, the development and implementation of these laws create numerous opportunities to reevaluate our current regulations and program operations to ensure we are best serving our customers. Since the Executive Orders became effective, USDA has implemented two major pieces of legislation: the Healthy, Hunger-Free Kids Act and the 2014 Farm Bill.

The Healthy, Hunger-Free Kids Act enhanced access to meals and improved the nutritional quality of all foods served in schools. The farm bill consolidated conservation and business programs, reformed commodity and crop insurance programs, and created innovative opportunities for environmental conservation. These programs were the direct result of thoughtful input and feedback from all points of view and work by Congress to develop comprehensive reforms.

To maximize stakeholder involvement in our retrospective review efforts, USDA utilized a variety of methods to engage the public. We published two Requests for Information in the Federal Register, requested comments through USDA's Open Government website, highlighted the initiatives in the Unified Regulatory Agenda, and directed the agencies to engage directly with their stakeholders on retrospective review.

Agencies conducted public outreach activities, including stakeholder meetings and constituent updates, and made good use of social media and Federal Register notices.

Agencies also took the advantage of hundreds of stakeholder events held to implement the 2014 Farm Bill to solicit input on its reviews and initiatives.

I would again like to thank the Committee for the opportunity to testify, and I ask that my written testimony be submitted for the record. And I look forward to answering any questions you may have.

Senator LANKFORD. Thank you, Mr. Zehren. Ms. Uzzell.

TESTIMONY OF MEGAN J. UZZELL,[1] ASSOCIATE DEPUTY SECRETARY, U.S. DEPARTMENT OF LABOR

Ms. UZZELL. Chairman Lankford, Ranking Member Heitkamp, Members of the Committee, I am pleased to testify today on the Department of Labor's retrospective review record.

The Department of Labor administers and enforces more than 180 Federal laws. These cover many workplace activities for about 10 million employers and more than 125 million workers. Our regulatory agenda is designed to bring opportunity, economic security, and safe workplaces to our Nation's working families, job seekers, and retirees.

We strive to develop regulations that are effective, efficient, and informed by and responsive to the concerns we hear from the regulated community. Since 2011, the Department has completed 14 retrospective review initiatives. Just four of these alone are expected to save more than $3 billion over the next 5 years. Almost

[1] The prepared statement of Ms. Uzzell appears in the Appendix on page 45.

20 percent of the Department's regulatory agenda are retrospective review initiatives.

Our reviews reflect several different but consistent policy goals. These include burden reduction—that is, the savings of hours or costs through the streamlining or elimination of requirements; the rescission of duplicative or unnecessary rules, such as the rescission of regulations for programs which have sunset; the alignment of existing departmental standards with industry standards; and the modernization of our programs' regulatory structure.

The Department has a comprehensive approach to solicit and receive input, which utilized both innovative and traditional tools, is designed to maximize input, and is audience accessible. This approach includes stakeholder engagement specific to retrospective review, such as our Web-based portal; regular engagement with stakeholders such as one-on-one discussions through the course of regular business; agency advisory committees, which are comprised of subject matter experts, Federal partners, and, importantly, our own employees.

In 2011, the Department initiated the first of two extensive efforts to seek public engagement on retrospective review using technology. Nine hundred and forty online users responded to our Web-based platform and submitted 113 individual recommendations. These helped to form the basis of our Department's first retrospective review plan.

In 2011, it was one of our own Occupational Safety and Health Administration (OSHA) employees that suggested the mechanical power press standard was in need of revision. In 2014, we revised this rulemaking, finalized it, saving impacted parties more than 610,000 burden hours annually.

In 2012, OSHA also finalized a rule to ensure manufacturers do not have to produce multiple warning labels or safety data sheets for the different countries in which they conduct business.

In 2015, the Department again turned to technology and employee engagement. We launched an online website called "Shaping Smarter Regulations" to engage stakeholders on retrospective review. We amplified the site through the Department's electronic newsletter which reaches more than 450,000 subscribers, alerted stakeholders through other electronic means, and published a notice in the Federal Register. Seven hundred and 18 users registered, and 65 individual recommendations were submitted.

We value the input of our employees, so we also proactively sought their views. Through our Idea Mill Challenge, DOL employees across the country were encouraged to identify regulations in need of revision. We were grateful to acknowledge those who provided input.

The Department has already begun to take action on the suggestions that were received. For example, the Department announced it would undertake regulatory efforts to modernize its Permanent Labor Certification Program, a suggestion we received from both the regulated community and our employees.

OSHA responded to suggestions regarding better protection of whistleblowers by linking its available information to other Federal partners. And the Office of Worker Compensation Programs (OWCP) responded to a suggestion that, in order to be more cost-

effective, the period of time durable medical equipment (DME) rentals are permissible should be extended. Our agencies are continuing to consider opportunities for additional review items on the input we have received.

Finally, we are working to modernize our own regulatory processes to ensure retrospective review is part of our regular work. For example, we are including retrospective review language in certain significant proposed and final rules. We are challenging ourselves to think creatively about the use of technology and modernizing reporting requirements. Our agencies and their expert staff are working together to share best practices, including experience with retrospective review, so we can continue to learn, improve, and make our regulatory work and products more effective, efficient, and transparent.

Mr. Chairman, Senator Heitkamp, I am proud of the Department's robust record. Our efforts to make rulemaking effective, efficient, and transparent and the direction with which we are moving to incorporate retrospective review as part of our rulemaking culture. I will be happy to answer any questions you may have.

Senator LANKFORD. Thank you. Mr. Nickerson.

TESTIMONY OF BILL NICKERSON,[1] ACTING DIRECTOR, OFFICE OF REGULATORY POLICY AND MANAGEMENT, OFFICE OF POLICY, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. NICKERSON. Good morning, Chairman Lankford, Ranking Member Heitkamp, and Members of the Subcommittee. I am Bill Nickerson, Acting Director of the Office of Regulatory Policy and Management in the Office of Policy at the Environmental Protection Agency. I am pleased to be here today to discuss EPA's record on retrospective review. We have made great progress in this area over the past 4 years and look forward to doing even more in the future.

Under Executive Order 13563, "Improving Regulation and Regulatory Review," the EPA conducted extensive public outreach in 2011 to seek input on whether and how to streamline, expand, or repeal existing regulations. This outreach included 20 public meetings as well as a number of Web-based dialogues. The agency also published two Federal Register notices to solicit public feedback on the agency's plan for the review of existing regulations. It received more than 1,400 suggestions. Since 2011, the EPA has maintained an open docket for public feedback on its retrospective review plan and subsequent progress reports.

The agency has conducted 50 retrospective reviews under the Executive Order. Twenty-two of these reviews have been concluded, resulting in the amendment of nine regulations. For example, one action amended the Spill Prevention, Control, and Countermeasure regulations. Another action amended regulations regarding control systems that capture harmful fuel vapors when you are filling your gas tank. Together these two actions will result in approximately $250 million per year in cost savings. The remaining reviews have required other actions, including the revision of agency guidance or evaluation criteria to affect how regulations are implemented.

[1] The prepared statement of Mr. Nickerson appears in the Appendix on page 51.

Since 2011, EPA has continued to expand our retrospective review activities. In July, we added six new actions to our retrospective review plan.

The EPA uses a thorough process for soliciting regulations for reviews. We ask for nominations from the public, agency staff members, and other Federal agencies. These nominations are referred to the appropriate agency office for consideration. Decisions on the review of regulations take into account consistency with statutory requirements, agency priorities, the principles of the Executive Order, and the availability of agency resources.

Earlier this year, EPA redoubled its efforts to solicit public input on retrospective reviews. At a quarterly meeting with intergovernmental organizations, we reached out to State and local governments on potential opportunities to streamline existing processes and reduce regulatory burden. In March, EPA published a notice in the Federal Register seeking input on how it might promote retrospective review and regulatory modernization through advanced information technology (IT). The agency received 27 public comments on this topic and is currently in the process of reviewing these comments for potential future activities for retrospective review, streamlining, and/or transition to electronic reporting.

The EPA's effort to implement the Executive Order is not the sole pathway for the review of existing regulations. The agency has long conducted retrospective reviews of its actions. Regular assessment of past regulatory actions is integral to the EPA's core mission and responsibilities and is often mandated by statute. Of the approximately 120 active actions listed in the EPA's Spring 2015 Regulatory Agenda, roughly 60 percent are reviews of existing regulations.

The EPA is committed to protecting human health and the environment and is continually improving the processes to achieve these protections. The agency regularly engages stakeholders on our retrospective review efforts to identify opportunities for streamlining existing processes, improving our regulations, and increasing use of innovative tools that ease and facilitate compliance. The EPA assesses progress on existing retrospective review semiannually and provides this information to the public on our website. We maintain an open comment docket for any public feedback on our progress reports and are responsive to public comments received related to retrospective review. When writing new regulations, the EPA is committed to designing reporting requirements that help facilitate later evaluation of rule effectiveness in improving environmental quality.

The EPA has a long history of thoughtfully examining our regulations to make sure they are meeting the needs of the Nation in an efficient and streamlined manner. Further, we have a robust record of working with States, tribes, local governments, the regulated community, and other stakeholders to ensure we coordinate our efforts where possible.

Thank you for the opportunity to be here today. I look forward to answering any questions you may have.

Chairman LANKFORD. Thank you.

The Ranking Member and I are going to defer our questions, and I recognize Senator Peters for the first questions.

OPENING STATEMENT OF SENATOR PETERS

Senator PETERS. Well, thank you, Mr. Chairman. It is just further evidence that this is the friendly Committee that you are willing to defer. I appreciate that, and I appreciate you holding this important hearing on this topic. Certainly I have been focused, as I think everybody on this Committee has been focused, on how we make the regulatory environment more efficient so that it works effectively. We understand that you all have very important core missions that you are focused on, and that we rely on your ability to execute that. But if there are ways that we can do it more effectively and efficiently, we want to be your partner in that. So we appreciate your input here today, and I think you will see more coming out of this Committee as well.

A couple of issues. First, Mr. Nickerson, I want to turn to an issue that—there was something in your prepared testimony regarding spill response regulations, and whenever I hear spill response regulations, I am always reminded of a big issue in Michigan that occurred just 5 years ago, when we had a very large oil spill in West Michigan. Over 1 million gallons of tar sands oil spilled into the Kalamazoo River. It has now turned into the most expensive pipeline break in the history of this country, and an independent investigation concluded, and this is a quote, that "weak Federal regulations" played a role in that spill of a million gallons. Right now the cost is over $1.2 billion. However, in the immediate aftermath of that spill, the cleanup was originally estimated to cost $5 million. That was the original cost estimate, $5 million. It turned out to be $1.2 billion, so just a little off. And so that makes me concerned when you are looking at costs, when we are looking at cost-benefit analysis, which many folks talk about, that a regulation, a cost-benefit analysis thinking you could have a $5 million cleanup, could be seriously off base and could impact the ability for that regulation to really protect the Great Lakes watershed or other places around the country.

I focus on this because we have another pipeline that is over 60 years old in the Straits of Mackinac, which connects the Upper Peninsula to the Lower Peninsula. A recent University of Michigan study said that it is the absolute worst place to have an oil spill anywhere in the Great Lakes Basin because of the volume of water that goes through the Straits of Mackinac. In fact, the volume is equal to 10 times that of Niagara Falls. So to have a spill there would be catastrophic.

And so we need to take a look at those regulations. I believe that we have to have certainly the retrospective look, but I am just curious. I know in your testimony you talked about the milk and milk producers' savings that you were able to save through regulations. But are there any examples of the EPA using the retrospective review process to look at how we might strengthen regulations? Because perhaps some of those regulations may not be where they should be, as we saw in the case of the Kalamazoo River spill. Or there may also be best practices that the industry has come up with since the original regulation that allows us to take a look at how we can do things better. Is that ever part of the process? And can you foresee that as being something we should take a look at?

Mr. NICKERSON. Certainly that is a part of the process. The Executive Order does talk about the possibility of expanding, in addition to streamlining or reducing burden. I think the EPA has a host of actions that are on our plan, and 28 of them are related to rules. I think the emphasis has been to look for burden reduction and cost savings, but I would be happy to check in detail on whether any of them are looking to expand in some way.

Senator PETERS. Well, I would appreciate working with you, because obviously we want to reduce and try to make things more efficient, as I mentioned in my opening comments. But there are instances where we may have to do a better job, and particularly given the incident we had in Michigan, I think we could have done better, and we need to be constantly reviewing it. Hopefully we are in that review process right now given the fact that we may have another potential problem that could arise in northern Michigan as well.

And then my last question is that I have heard about how each of your agencies are reaching out to stakeholders and getting input. One thing that I am particularly focused on are small businesses. That is really the engine of growth for our country. I serve on the Small Business Committee. It is something we spend a great deal talking about. But I have not met a business owner who has the time or who has anybody on their staff to go through the Federal Register and look for ideas as to how we can possibly make these regulations work better and find creative ways to deal with it. So I am just curious. What sort of efforts are in place with each of your agencies to proactively engage small businesses in this? I have heard you talk about local governments and State agencies, but what about small business? How active is each of your agencies in reaching out to our small businesses and identifying where their challenges are? If we could start maybe with Ms. Klein.

Ms. KLEIN. Sure, and thank you for the question. I think we have not at this point engaged specifically with the small business community, but it is a very interesting idea, and I think one that we want to take back and maybe work with you to find the right entities and organizations that we might work with. A lot of our focus, as I mentioned in my opening statement, has been on Indian country, and so we have engaged with organizations like the National Congress of American Indians (NCAI) and conducted listening sessions, and I know Federal Register notices—who reads those? But I think, we definitely need—that is an area of improvement for us, is to find more organizations and to proactively reach out to folks about suggestions that they might have for us.

Mr. ZEHREN. One of the priorities for USDA is improving customer service and breaking down barriers to participation in our programs. A large number of USDA stakeholders are, in fact, small businesses, and we work every day with them to ensure they can enjoy the benefits of the programs we offer.

Agencies are in constant communication with small businesses, whether it is like the rural development mission area that provides loans and funding to small businesses or regulatory agencies like the Food Safety and Inspection Service, which is in their firms every day meeting and discussing the issues that a small business may have in meeting the regulatory requirements of that agency.

USDA's regulatory review effort focused on a couple of areas where we can break down those barriers. We are investing millions of dollars in IT improvements to make it easier for businesses to apply and gain access to our programs. We have also done some regulatory reform efforts in the meat and poultry inspection area that provides different capability, different ways for small businesses to engage with the agency and ensure that the products they produce are safe.

Ms. UZZELL. Thank you for that question. I think we, too, believe that it is a very important issue to be able to ensure we are engaging with small businesses. We have an open door and open table and attempt to engage as best we can with employers of all sizes. And I know that as we develop our regulations, we strive to take into consideration the special needs that they may be facing as they come into compliance and attempt to provide additional compliance assistance where we can throughout all of our programs.

We work closely with some of our other Federal partners, including the Small Business Administration (SBA) and the Office of Advocacy, doing listening sessions and roundtables, recognizing they may have greater access to some of the parties on our regular communication on a daily basis. But I think we would welcome any suggestions and additional advice that you may have to offer about how we can better engage the small business community as well.

Mr. NICKERSON. EPA is in the practice of reaching out to small businesses regularly, and particularly in regards to the retrospective review. Over the past year, we invited some small business representatives to come to the EPA to talk about retrospective review, and we also participated in the small business roundtables that my colleague referred to that are organized by the SBA Office of Advocacy. So as a general matter, we are in contact with small businesses, and particularly over the last year in relation to this plan, we sought out their input.

Senator LANKFORD. Thank you.

Before we move on to Senator Ernst, let me just let the panel know the way we typically work, our process here. We typically have a first round of questions, somewhere around 5 minutes for each member. And then the second round of questions is more open-ended, and we will have more free-flowing conversation with all Members at the dais interacting with each other and with the witnesses. We expect to be done here definitely before 6 p.m. tonight. [Laughter.]

So just expect a first round, then a second round of questions, as we go from there. Senator Ernst.

OPENING STATEMENT OF SENATOR ERNST

Senator ERNST. Thank you, Mr. Chairman, thank you, Ranking Member Heitkamp.

Thank you very much for being on the panel today. This is very exciting. I do not know why the room is not packed, because this is a really exciting topic here, at least for those of us up here in the front of the room.

Just here in recent months, I have had the great opportunity to work with Senator Hatch on his SCRUB Act, which is a powerful and I believe a fair approach to reducing unnecessary costs of regu-

lations. This would establish a bipartisan and independent commission to take a very thorough yet objective look at a number of major regulations that are at least 15 years old. So these are regulations that were passed many years ago and that could be repealed because, one, they have met their original objective or intent and are no longer needed; or maybe even those that are now obsolete because of technology or market changes. So that is what we try and focus on, rules and regulations that are not needed any longer that really could go away.

So I know that this is a top priority, the SCRUB Act is a top priority in the House, and I do hope that they are able to pass that bill soon over there. But, again, I want to thank all of you for joining us. I think this is a good discussion to be having.

Mr. Nickerson, I would like to start with you first. Can you walk me through how the EPA measures or factors the cumulative burden on the public with its regulations? Can you walk me through how—we know that you take a look at regulations, but what is the actual process that you use within your agency?

Mr. NICKERSON. I do not believe that we are looking to do that as part of our retrospective review efforts, although the agency is sensitive to that issue, particularly in circumstances where rules have come out that affect the same industry. I know that we have made efforts to get a better understanding of what those cumulative impacts are and, as the rules have been developed, have worked to make sure not only that there are not duplicative or overlapping requirements, but also to be aware that there are cumulative effects and we need to be cognizant of them as we develop——

Senator ERNST. OK. So that has not been part of the process in the past to take a look at all of these different regulations and see how they are impacting small businesses, maybe as Senator Peters stated?

Mr. NICKERSON. Well, as each rule is developed, we assess its cost on the regulated community, including small businesses. And as additional rules come along, we are cognizant of the cumulative impact. But of the 50 actions that are identified in our plan at this point, I do not believe that any of them are specifically addressing this issue.

Senator ERNST. OK, and I think that is pretty important because so many of these agencies out there, they do have a review process, but they are operating independently of each other. So maybe the EPA has regulations where there is a burden to our public, and the USDA may have similar regulations that also create—so we really need to know what is the cumulative burden. It seems our agencies operate in a vacuum when it comes to this. So that is something that I would encourage all of our agencies to take a look at because there is significant cost and impact to the public if we are operating in a vacuum. And maybe somebody else can address that situation also. Do you look at a cumulative burden when it comes to any particular rule or regulation out there, how it is maybe being addressed by other agencies? Or do you just focus on your own agency?

Ms. KLEIN. Well, I can say that one of the primary functions of the Office of Information and Regulatory Affairs, for instance, is to

make sure that information is collected from other agencies when a particular rulemaking is going forward. So, for instance, if the Interior Department has a proposed rule that affects energy development and EPA might have similar requirements, they make sure that we are coordinating together and not enacting a rule that would impose duplicative requirements. And so that function of OIRA is really to help with that process.

But as my colleague Mr. Nickerson said, I do not know that we have ever taken a look at the overall cumulative impact of every rule that is on the——

Senator ERNST. Right, because I will tell you that is an issue out in Smalltown, USA, when there are so many agencies that are placing burdens upon our public, and the costs to implement and become compliant sometimes can be overwhelming. It is not just EPA or USDA. It is so many other regulations that together really stymie our economy. So I think we have to be very careful about that.

Just very briefly from all of you, please, how many regulations or rules have you repealed using a retrospective review? How many have you repealed just in the last 5 to 10 years?

Mr. ZEHREN. Well, for USDA, of the nine completed actions, seven of those were regulations that either modified or improved the effectiveness of those regs. But I would just like to reiterate that for USDA we go through a periodic reauthorization of a vast majority of our programs through the Farm Bill and child nutrition rules, and that gives us an opportunity every 5 years to really take a hard look at what is working, what is not working, and the Farm Bill repealed numerous programs that were found to be ineffective and not achieving the desired goals. It also made reforms in the business programs and the conservation programs by saying, hey, we have too many of these, let us consolidate them, let us get focused on what is really working in those programs. And there were some really innovative changes that were made in those bills to improve our performance in those areas.

Senator ERNST. Thank you, USDA, for doing that.

How about some of the other agencies? If you would, Ms. Klein.

Ms. KLEIN. Sure. So the items that we have identified for retrospective review, the vast majority that have been completed to date have also amended existing regulations to improve them. I do not know that we have repealed any, but the vast majority of the feedback we have received that led to identifying those particular regulations were asking for improvements and not necessarily repealing. So, for instance, one of the suggestions we got was on falconry and the need to get a Federal permit for falconry activities, and we eliminated that need if a State or Indian permit was already in place. So it did not as much repeal that particular rule, but it improved it so that if—it eliminated the requirement to get a Federal permit.

Senator ERNST. OK. Just very briefly. I am sorry. Yes, go ahead.

Ms. UZZELL. Sure. At the Department of Labor, we have completed 14 retrospective review items. Those are a mixture of repealing regulations that may have stood up programs which have sunset and modernizations or improvements made to other standards. So, for example, the feedback that we heard for our mechanical

power press rule was not that the rule itself needed to be repealed, but that a recordkeeping and reporting requirement, and it was outdated and not useful. So we went through the regulatory process to rescind that particular provision of the underlying standard, and in the end we have saved over 600,000 burden hours annually from making that change. The underlying standard needed to ensure worker safety is still in place, but that recordkeeping and reporting requirement, which was the burden on the employer, has been removed.

Senator ERNST. OK. Mr. Nickerson.

Mr. NICKERSON. Similarly, 28 of our 50 actions on our plan are related to rules, and 9 of those have been completed. The focus there has been on streamlining or eliminating redundant requirements. One example I mentioned in my opening statement was on onboard vapor recovery when you are filling up your car with gasoline, and historically those controls had been at the pump, but now they are built in onboard the car itself, so we eliminated that duplicative requirement as one of the actions that is on our plan.

Senator ERNST. Very good. I think those are some great examples on what can be done. Oftentimes what we have seen—and the American Action Forum recently released a study that reviewed all of the agencies, and they found that when they did retrospective reviews, often they were expanding rules and regulations, and it added up to an additional $3 billion in costs to the American taxpayer. So if we can streamline and do a better job, that is wonderful, but we have to remember that cumulative burden, and rather than expanding, we also need to make sure that we are getting rid of those rules and regulations that do not make sense.

So thank you very much for the extra time, Mr. Chairman.

Senator LANKFORD. Senator Heitkamp.

Senator HEITKAMP. Thank you, Mr. Chairman.

Just to build on what Senator Ernst was talking about, one of the issues that I have raised over and over and over again here is that we sit thinking that only the Federal Government actually regulates or passes laws, and there are State and local codes and ordinances, and there are State laws and State regulations. And frequently those regulations may duplicate what you are attempting to do. They may, in fact, conflict with what you are attempting to do. And as part of this retrospective review, one of the questions I have is: Have any of your agencies looked at State regulation, looked at local regulation or tribal regulation and ordinances to determine whether, in fact, we are keeping on the burden and finding inconsistencies in regulation? I will give it to anybody who wants to take it. I am looking at you, EPA.

Mr. NICKERSON. Then I guess I will take it. I think certainly we are in regular communications with States particularly. In many EPA programs, they are actually our co-regulator, so we have a very close working relationship with them, in addition to regularly meeting with not only States but also the Conference of Mayors or the Association of Counties and other groups that represent State and local governments to——

Senator HEITKAMP. I think the Toxic Substance Control Act (TSCA) would be a great example there where regulation in some States would be either more stringent than what you provide and

so complying with both sets of regulations may not actually advance public health. It may only create additional burden. So I do not want to get into individual regulations. I just want to at least raise this issue. And certainly for the Department of Labor, many of the—not to pick on the Department of Labor, but many of the burdens that we hear frequently are reporting burdens from the employer standpoint, whether it is wage and hour things, whether it is, in fact, safety issues, whether it is reports that need to be filed regarding salary payments. And so a lot of those may, in fact, be inconsistent with what is State regulation. Have you ever at the Department of Labor looked at State regulation in conjunction with a retrospective review?

Ms. UZZELL. Thank you for that question, and I think we would agree on the importance of ensuring that we are engaging the broad community, including our State regulators. To the best of my knowledge, we have not done a cumulative survey State by State of the regulations, and I would be concerned if we did it, it would be outdated potentially a month later. But that said, I think if there are particular examples of burden that you are hearing with regard to the reporting requirements, we would love to hear that as well, because I think one of the areas that we are pushing our agencies to think more creatively about is how to take advantage of technological advances, minimize reporting and burden requirements, think a little more out of the box, ask questions about is the data necessary to receive on X time schedule.

Senator HEITKAMP. Yes, let me give you an example. Davis-Bacon, you guys take the reports on Davis-Bacon wages. So I have a contractor, someone who is part of a Federal contract. What happens to him is the project is stalled out, right? And they are just waiting for additional funding or they are waiting for additional permits, and every week—I think you require a reporting every week—he is filing a report saying nothing has changed.

Now, I think that is kind of silly, weekly reporting on your wages when you are not paying any wages, but the project is ongoing. There is a great example, it seems to me, of recordkeeping where people are willing to give you the data, but, to require it when nothing has changed and the project is not going forward does not seem to be a very effective use.

I just raise that as a—"for instance." There is a "for instance." I think we cannot think about this in a vacuum. We cannot look at what we do in Washington, DC, and think that that is the entire universe of how we regulate industries and how we protect public safety and health. And so I just want to put this on the table.

You all have come up with some pretty good stories of savings, time savings, and we are grateful for that. But I think we need to quantify those. We need to make sure that we maybe have a second pair of eyes. And so this Committee not only advanced this idea, but is currently considering in the full Committee a provision which would create a commission, not just, this Executive Order but actually a commission that would advance, kind of review, a retrospective review, get a better handle maybe on what Senator Ernst is talking about, which is across agencies taking a look at it.

What would be your opinion of a review panel established for analysis on retrospective review? We will start with you, Ms. Klein.

Ms. KLEIN. Well, thank you for that question. I think that is a really interesting idea, and I think we would welcome outside expertise on how to better quantify the relative costs and benefits, the methodologies that would best be used to do that kind of analysis. Obviously, a lot of what we do is subject to anecdotal evidence and rhetoric about the relative costs and benefits, about those regulations. And so I think having an outside commission that would provide us with expertise is an interesting idea and one we would welcome working with you on and how best to move forward.

Senator HEITKAMP. What about USDA?

Mr. ZEHREN. Well, I would just say that is a policy question that is currently under review at USDA about the particular proposal, but I just want to reiterate that one of the foundations of our regulatory review process is robust and constant stakeholder involvement. USDA has a whole series of advisory committees. We have a whole series of technical industry boards. We have constant communications with our industry where we get this feedback, where we get stakeholder involvement and input on our practices, on data availability, that contribute to ensuring that our rules are the most effective and efficient. I think USDA has been developing——

Senator HEITKAMP. And we certainly would not want to replace any of that. We want to take a look at kind of a broader—maybe a mile-high view as opposed to getting down in the weeds so that we can look at the whole regulatory environment.

Department of Labor?

Ms. UZZELL. Thank you, and I share the view that that is an interesting idea for consideration. At the Department we also have a wide range of advisory councils and welcome the input from experts. So we would want to make sure that anything would be compatible with that and provide the flexibility that we would need to be able to look across all of our regulations. It also seems like that may be an appropriate question for OMB and OIRA that has the perspective across all of our agencies.

Senator HEITKAMP. Thank you.

Mr. NICKERSON. I think a key consideration for EPA would be to retain some flexibility in how the retrospective reviews are prioritized. The circumstances change and we get new ideas coming through the door. Some of those reviews might relate back to ongoing agency actions or be particularly timely. So in addition to being responsive to stakeholder feedback, retaining the discretion to prioritize the reviews has been a very useful and important thing for us.

Senator HEITKAMP. Thank you for your insightful comments. I am sure as we open this up we will get into further dialogue about this idea.

Senator LANKFORD. Yes, let us do that. Let me bounce a couple of different questions just to set the stage for some of the conversation as well.

Do any of you know how many rules your agency has total on the books? We are not going to get into guidance. I would say that Senator Heitkamp and I have strong opinions about the guidance side of things. But let us talk about just the rules that are listed as rules. Does anyone know how many you have in your agency?

Ms. KLEIN. I do not know the answer to that question.

Mr. ZEHREN. I do not know. It would be looking at Code of Federal Regulations. I used to be able to keep them on my bookshelf, but now it is all electronic, so you cannot quite get the visual.

Senator LANKFORD. Now you have to have a larger bookshelf. That is part of the problem as well.

Ms. UZZELL. I do not have a number to provide you.

Senator LANKFORD. OK. Mr. Nickerson.

Mr. NICKERSON. I cannot provide a number at this time.

Senator LANKFORD. OK. It is not trying to be a "gotcha" question. It is a lot. The only one that I actually pulled on it was Labor. Bless you for that. Sorry. It is 676 rules, the number that I pulled on that. And the reason I tried to pull it is to get a perspective because when you talk about reviewing 14 of 676, it begs the question of how do you select it, because you are all going through filters. All of you described a filtering process, talking to staff, electronic methods of actually getting input into it, town hall meetings, interacting with people, Federal Register announcements—all of those things. Secretary Perez and I talked at length about Federal Register announcements and such. It was months ago.

The challenge is, if you have 676 rules and 14 of them have gone through the review process over the last several years, to go through the rules that are out there will take approximately 125 years or so. So, obviously, the goal is not to review every one every time, but, Ms. Klein, you mentioned I think at one point you said it was the goal to try to get at least one new one a year, to be able to get it out there and to be able to get it going. That was the minimum standard. The challenge is, if there is only going to be one to five to 10 that happen in a year, it is extremely important there is a good filtering process to know which ones are chosen, because that means there are many that do need to be addressed that are not.

So my question is—I know there was this large gathering filter on it. I want to ask about the final decision phase. In your agencies, how is the final decision made? You have all of this data that has been gathered from town hall meetings, from electronics, from conversations in the agency. How is the final decision made in your agency on which regulation will actually go through the laborious process of retrospective review? I can start in whatever order. Ms. Klein, you can take that first if you would like to.

Ms. KLEIN. Sure. Thank you for that. We collect information from each of our bureaus and offices about what they want to put forward for retrospective review, and it does go through a process where our Office of Executive Secretariat, which largely helps—they are like the traffic cops of regulations within our agency and help move the papers around, and they bring those forward to the Deputy Secretary's office and the Secretary's office. And then we engage in a process with OIRA to determine what is identified.

I have always felt that we identify things for retrospective review, but there are a number of actions that we might be engaged in that are not identified as retrospective review but really when you look at them could be identified in that way. But our bureaus and our staff—part of our challenge with retrospective review is really getting people to think about it in their day-to-day business and really tell a better story about what they are doing in their

day-to-day work, and that what they are doing, improving and modernizing our regulations is part of retrospective review. And we do not always do a very good job of——

Senator LANKFORD. It should become all that. Just a clarification. Secretary, Deputy Secretary, and OIRA, when the final decision is made, that is the conversation point. Once all the data is there, collected, and go through a process.

Ms. KLEIN. Yes.

Senator LANKFORD. Is it a series of meetings? A single meeting? You do not have to give me the details of all of it. I am just trying to get a feel for that final decision once it gets made.

Ms. KLEIN. Well, we have a semiannual reporting requirement to OIRA, so we provide reports twice a year. And so those meetings happen throughout, where a regulation might come up and we are alerted to it, we actually meet with the Office of Executive Secretariat every day. And so it happens during the course of conversations. I cannot say that it is—how many meetings.

Senator LANKFORD. OK. It is an ongoing process.

Ms. KLEIN. Ongoing.

Senator LANKFORD. All right. Thank you. Mr. Zehren.

Mr. ZEHREN. Well, at USDA the No. 1 priority is implementing the Farm Bill, since 2014, that has been our No. 1 focus: get that bill implemented rapidly and effectively. And as the Secretary testified, we have pretty much done that. We are nearing the end of that implementation phase.

For other actions——

Senator LANKFORD. You have to hurry and implement it before Congress changes it midstream. [Laughter.]

Mr. ZEHREN. Well, that is rigorous oversight. But the Department every year has a top-to-bottom regulatory review of the regs that the agencies are proposing to do. We do that twice a year, consistent with the publication of the Regulatory Agenda. The number of criteria——

Senator LANKFORD. Who sets the Regulatory Agenda? How does that——

Mr. ZEHREN. USDA's strategy is to have robust senior-level involvement, so it is managed out of the Office of the Secretary. So the Office of the Secretary will put out a call for what are the key regulations you want to accomplish.

Senator LANKFORD. Go ahead.

Senator HEITKAMP. A call to whom?

Mr. ZEHREN. To the mission areas and then to the agencies, and then we identify, then they respond what their regulatory ambitions are based on their involvement with their stakeholders and what their legislative requirements are in that. So we review that twice a year, and we come up—as part of that process, it is determining what the regulatory priorities are for the Department.

Senator LANKFORD. OK. That includes what will be reviewed. So that is setting the Regulatory Agenda for new regulations and examination, but it also includes the reviews in that.

Mr. ZEHREN. Of old regulations as well.

Senator LANKFORD. OK.

Mr. ZEHREN. That is presented to the Office of Management and Budget, and we review that with them to determine if this is consistent with the administration priority.

Senator LANKFORD. Is OIRA involved in that as well?

Mr. ZEHREN. Yes.

Senator LANKFORD. Or does this go straight to OMB?

Mr. ZEHREN. It goes to OIRA.

Senator LANKFORD. OK. Got it.

Mr. ZEHREN. And we meet regularly with them to establish what the regulatory priorities of the Department should be to be consistent with administration guidelines and priorities.

Senator LANKFORD. OK. Then the final decision, let us say you have 50 things in the bucket at that point, and you determine we have only got the bandwidth to be able to do five of these. Where is that final decision made?

Mr. ZEHREN. With the Secretary of Agriculture.

Senator LANKFORD. OK. Fair enough. Thank you. Ms. Uzzell.

Ms. UZZELL. So at the Department of Labor, we take great care to ensure that we are having robust, ongoing conversations with our agency heads, our Deputy Secretary, and our Secretary about the regulatory actions of the Department. We do not separate out in those discussions retrospective review from non-retrospective review regulations because the workload to develop those initiatives comes from the same pool of staff.

Senator LANKFORD. Which is how many staff? Help me understand the context of that.

Ms. UZZELL. There are regulatory experts and leads in each of our enforcement agencies or our regulating agencies. So I cannot give you a number of how many people work on regulations in each one of our agencies, but that each agency within the Department of Labor has a head of standards or regulatory division, and then they have——

Senator LANKFORD. They are both promulgating the new and working through that and also reviewing the old.

Ms. UZZELL. Yes, because the expertise that is needed to do that is very similar in nature.

Senator LANKFORD. Sure.

Ms. UZZELL. So you are drawing from the same talent pool. Our regulatory leads in each of our agencies compose a Regulatory Council so that across our Department, our regulatory experts are working with one another constantly to share best practices, and that is something we coordinate through our Office of Policy, which is a very helpful coordinating function. We have ongoing dialogue between our agency heads and the Office of the Secretary about what the priorities are, what they should be, what information the Secretary and the Deputy Secretary are hearing from stakeholders, what our Office of Public Engagement is hearing from stakeholders, what the agency heads are hearing from stakeholders and their staff.

And so when I say the Department of Labor really emphasizes the input that we are getting from our employees, it is because in many instances it is our employees across the country who are engaging front-line with the stakeholders, and they know now that

they have a feedback loop, a way they can share what they are hearing back to their agency heads.

So our agency heads, working through their regulatory experts, will develop priorities, and those priorities have to be informed by not only what resources they have available, but what is statutorily required, what is court-mandated, and I think that has to drive a lot of our decisionmaking. You balance that against the list of priorities for the Department, the priorities for the Secretary, the priorities for the Administration. And in that, constantly included in that is how are we addressing what may already be out there. How are we taking advantage of the commitment and driving forward the commitment to retrospective review?

So it is not a separate conversation that is had. It is an integral part of the conversation. That is one of the things we are doing to drive the culture.

Senator LANKFORD. So the final decision is made where and how? All of this is gathered, all this input.

Ms. UZZELL. All of it is gathered. All of the input is available. Final decisions inside at the Department lie with the Office of the Secretary in partnership with the agency heads. That is transmitted to OIRA and OMB, and we have robust conversations with them to ensure that we are not conflicting with the work that the other agencies are doing.

Senator LANKFORD. OK. Thank you. Mr. Nickerson.

Mr. NICKERSON. I think one thing I want to emphasize is that a lot of EPA's rules are on a regular schedule for review based on——

Senator LANKFORD. Right. Yours is a little bit different, obviously. They are statutorily required.

Mr. NICKERSON. Right.

Senator LANKFORD. And that is part of the reason that we wanted EPA to be here, because you have lived in a world where there is a requirement to do reviews in certain cycles.

Mr. NICKERSON. So in most cases, those are not called out as part of our plan. So let me talk specifically to the plan. Once we get all of the feedback from our stakeholders and from within the agency and from other Federal agencies, that collection of suggestions is given to the appropriate programmatic office at EPA for input by their own experts, and then that is considered in addition to the agency's priorities, the principles of the Executive Order, and the availability of resources to prioritize which things would be part of the retrospective review.

Senator LANKFORD. So let me ask a process question, because that is a great issue that all agencies have, is the availability of resources. You are dealing with both manpower and dollars to be able to do it in the investment. When you have to make the decision—I guess the concern that I have, and I want to put Senator Heitkamp in this as well—is that at some point an agency says this really needs to be reviewed, and I know it is costly on the economy, but it is really expensive to review this particular one, and so we will wait to review that one because it is costly on us, knowing that it is an issue that needs to be addressed, because your employees are all screaming at you, "Hey, I get this on the phone all the time, people are sick of this."

How do you balance the two of those where it is we are tough on dollars to be able to do it but we know this has a negative effect, making a decision we can only do five, best-case scenario we would really do 15, but these other 10 we do not have the dollars for?

Mr. NICKERSON. It is true in our case as well that many of the staff who are doing the work on retrospective review are also doing new regulations that we are obligated for various reasons to undertake. I think that balancing takes place initially within the program office, but eventually up at the agency senior leadership. And then those final suggestions are also discussed with OIRA, as some of my panel members have mentioned.

Senator LANKFORD. OK. So senior leadership has to make the decision where they are going to invest budget dollars and how that is going to work at that point.

Mr. NICKERSON. That is right.

Senator LANKFORD. OK. That is totally different off the subject, but you might want to pass on the Renewable Fuel Standard is still hanging out there. That is off-subject. That is for free. You can just pass that on. We will not bring it up.

Let me ask one question, Ms. Klein, you brought up as well, and you can jump in at any time here, Senator Heitkamp. One of the things that you mentioned was the right-of-way on Indian land that you cited. That is one of the areas that we had pulled on before, as you had referenced. That is one that is a recent one. It has been redone. That was promulgated in 1968. As far as we can tell, this was the first review of that since 1968. Since I was born in 1968, I can tell you, I know exactly how long ago that was. That is awhile to wait on a regulation. Why did that sit out there for 47 years? And what spurred it now? Right-of-way issues have been around for a long time. We obviously have telephone and power lines and everything else. In Indian country, this has been an issue for a while. What brought this to the top? And what can we learn from that?

Ms. KLEIN. Thank you. I am not sure I can speak to why it has taken so long——

Senator LANKFORD. Yes, you do not have to take the blame for the previous 40 years. I am just trying to figure out what brought it to the top now.

Ms. KLEIN. Certainly between 1968 and 1975 I cannot speak to. But what spurred it on was really the Administration and the Secretary's commitment to improve how we are regulating Indian country. We heard loud and clear and in terms of the intersection between people screaming at us and telling us that things are not working and what our core mission and priorities are, improving regulations for Indian country is that intersection.

Senator LANKFORD. Right, but I am trying to see what brought it up and how this gets addressed and what we can learn from it. Was it pure volume? Was it the number of people that were expressing it? Was it the length of time? Because what we are trying to determine is some of these things take a long time for review, and we are going to talk about the mechanical press issue. That was a good success actually to be able to review as well with OSHA. But it is the same issue. It has taken awhile to be able to get there, and what we can kind of learn on this side of the dais,

I am trying to help the agencies in this to say things cannot sit out that we know have been a problem for this long. Does that make sense? I am looking for the triggering devices and things that we can learn from it to say this pushed it over the edge.

Ms. KLEIN. Right, and as to the rights-of-way regulation in particular, we have had an emphasis on how can we provide Indian country with more power over their own lands, and so the rights-of-way regulation, like the HEARTH Act leasing regulations before that earlier in this Administration, the Housing Improvement Program rules that I also referred to, these are all part of a very concerted effort on our part to try and shift some of the responsibility and governance to tribes so that they can start governing what is happening on their own land.

Senator LANKFORD. So there is a philosophical change within the leadership of Interior to say this is important to us, so the selection was made we need to address this based on that.

Ms. KLEIN. Yes.

Senator LANKFORD. Because like I said, it has been years that this has been an issue, but it was philosophically the top saying we have to redress this.

Ms. KLEIN. I would suggest that there has been a philosophical change in how we approach Indian country.

Senator LANKFORD. OK. Ms. Uzzell, let me ask you as well about the mechanical power press rule, because, again, that is one that has been talked about for quite a while the paperwork requirement on that. What brought that to the top to finally say this has to be addressed now?

Ms. UZZELL. I think for us there was, including from the front office and the Office of the Secretary through the agency heads, truly an increased emphasis on trying to hear what our enforcement officials and our employees in the field were telling us. And in 2011, when we did a very robust engagement that involved and included our employees and that came back, there were questions raised with the agency about you are hearing this from the employees, is there something we can do? And I think that through that dialogue and through the emphasis on employee engagement and our robust efforts to drive a greater culture change within the Department and the increased emphasis on retrospective review, it became clear to us that that was something that there was not a reason to proceed with.

Senator LANKFORD. OK. If a rule like this, when it was first promulgated, had a deadline to say at some point we have to review this again—I do not mean a deadline to go away, but I mean a deadline that at that spot we need to review it, and so there is this normal rotating calendar, would that have helped? The Department of Transportation, for instance, has that already. Every 10 years, those rules have to come back up again, and someone has to look at it. So it cannot sit out there for 47 years or for a long time and say this has to rise to the top. EPA deals with that all the time. I can assure you, if EPA misses a deadline, there is a whole team of lawyers hovering around EPA ready to file suit on them to try to compel that.

Is that a help or is that a hindrance to the agency to be able to have some sort of deadline sitting out there?

Ms. UZZELL. I am not certain that it is something that is going to be, if it is rigid, that it would be extremely helpful, and the only reason I say that is because, if it is a review every 10 years and if that is the standard that is assigned, and if the concerns do not arise in the year one through 10 and they arise in year 11 or year 12, then you are going to be no more swift in addressing the issue or the concern that has arisen than you would be if there was no standard for review. So I think there are pros and there are cons to trying to set something that is rigid.

I think we are trying to drive a culture change—but need the flexibility to be able to do that internally, and the flexibility to try to balance the resources, the resource concerns, the statutory mandates, the court-ordered regulations that we are required to—and we are just pushing retrospective review as a priority so it is on equal footing with the other priorities.

Senator LANKFORD. And I agree and I think we agree on that. Retrospective review is one of those areas that you have to examine based on the cumulative process that is out there. Some regs that have been there for decades may have been very necessary decades ago but now technology has increased, State enforcement has increased, the industry has dramatically moved past that, and it is not as much of an issue, yet they are still seeing the paperwork requirements and burdens and measurement requirements and everything else.

You mentioned a couple of times the cultural change. This is one of the things that if I get anything from people at home, it is not that they are opposed to government. I really do not get that, and I think there is a misnomer that people say—they call because they are mad and they do not want government. I just do not hear that. They want a government that they know is there to serve them. It is the attitude of the regulator, it is the attitude of the compliance person.

I walked into a business not long ago that said to me directly, "OSHA used to come, and when they came, they walked around the facility, and they said, 'Hey, that needs to change, that needs to change,' and they were extremely helpful. Now they walk in and say, 'There is a fine for that, there is a fine for that, and there is a fine for that.'" The first time I have heard about it, and it seemed like there was a completely different issue. And with that particular person that walked through the door, the attitude was not to serve. The attitude was to fine. Now, is that every person at OSHA? No, I do not believe it is. But they immediately walked away saying, "My government is opposed to me rather than helpful to me."

Now, I do not hear that from Secretary Perez, but I would say that cultural issue is very important. Let me just run down a couple things that I have heard just recently on it. I talked to someone recently that turned in a form that was 73 pages long of zeroes. Page after page, they had to go in and fill in the blank with zero because they had nothing to report.

I had another person in my State that did not turn in a form saying they had nothing to turn in. They faced a $1 million fine for not turning in a form saying they had nothing to turn in.

I have another business, completely different agency on it, that did not turn in a form, was in full compliance, but did not even know about the form, did not know it was needed, was in compliance if they had turned the form in, and they were fined $840,000 for not turning in a form, though they were in compliance if the form was turned in, but simply the piece of paperwork, they are now facing all this arbitration and trying to go through this process to not have to pay an $840,000 fine.

One of the folks I talked to in my State recently was so upset at the regulator and the person they were interacting with, asked a simple question: "I want to talk to your manager." It was a simple, straightforward question. They were told, "No." And they said, "How do I get it?" And the response was: "Make a Freedom of Information Act (FOIA) request." Which they did and it took 6 months to get the name of the manager of this individual so they could contact the manager. That is not service.

Now, again, this hearing is not about that, but it is part of the retrospective review process for agencies and for all the folks at this dais to know, we really do still work for the American people, and everything that we do dealing with safety and with health, all those things are to serve. And at the moment that our forms and our processes appear that the American people work for the Federal Government rather than the Federal Government works for the American people, it is on its head.

And so part of our challenge is: How do we constantly go back and look at these things and have a regular process to make sure that we are not treating the American people like they work for the Federal Government when it is the reverse?

So I think that is some of the passion—I do not mean to speak for both of us on it, but I think that is some of the passion—because, again, I do not hear people anti-government. They just want to know: How do I make this work more efficiently so I actually work for my employees and my family rather than having to turn in constant forms?

Senator HEITKAMP. Well, and I think they are pro-common sense. I think most people can say, look, do we want safe food? Absolutely. Do we want to be able to track when there is an E. coli breakout? You bet. Do we want to make sure that we do not have human slavery and that people are getting paid what they are required to get paid under Federal law? You bet. Do we want the tribes to have access to systems and rights-of-way so that they cannot flare their important natural gas? Yes.

So all of these regulations are critically important, or we would not be here. And many of the regulations that you all have promulgated we have mandated. I mean, that is the dirty little secret here, is that we blame the regulator, but a lot of what the regulation is is basically trying to be in compliance with our laws.

I have an issue that I want to raise about resources, and, you guys have come up with some good examples, saving lots of money and lots of time by engaging in retrospective review, and maybe you are reaching for the low-hanging fruit. But if we go back and take a look at your examples and say with more resources we could actually save more money, we could actually do, kind of a Manhattan Project, for lack of a better example, for regulatory reform, for

regulatory review, and actually dig down, get it done, get it cleaned up, so that going forward—and the bill that we have introduced would require major rules going forward have a set of retrospective, kind of analysis that is subject to comment and finality with finalizing the rule.

But it seems to me that you are hamstrung somewhat by the requirements of moving ahead with the regulatory responsibilities that you have to either adjust existing rules, in the case of the new Farm Bill, or to write new rules, in the case of new regulations or new laws passed by Congress.

Just from your example—and it is kind of fun to have people who actually do this work, who go to work, and a lot of times we have your bosses here, and, they are all very bright and very enlightened. They do not do what you do every day. And so could you give me just an idea of if we were able to do a project like that where we really—both Congress and the Executive Branch, setting out some baselines, not ignoring the structures you already have, which you guys have been pretty clear that you have a robust group of stakeholders behind you who you participate with. But could you give me an idea of what more we could do in a shorter period of time with some additional resources and better collaboration with Congress? I will start with you, Elizabeth, if you do not mind.

Ms. KLEIN. Sure. Thank you. Part of what we have done over the past couple of months is try and get better numbers on what kind of regulatory staff we have in each of our bureaus. It is actually quite small when I started to look at some of the numbers. We have folks who are doing double duty, so, their full-time job is not just writing regulations. But, when you look at a bureau like the Bureau of Land Management (BLM) that has probably 10 or so staff who are full-time on regulations—and that is an agency that is 10,000 people, and they are down to one economist. It is just not their function. They focus on petroleum engineers. They want to focus on inspection enforcement. They want to focus on making sure that energy is being developed safely and responsibly.

And so it has been an ongoing issue with the Department that we do have regulations on the books that are over 30 years old and have not kept pace with current industry standards, and that is part of——

Senator HEITKAMP. So you would agree some additional resources and maybe a big kind of oversight project from the standpoint of Congress, not in the "I gotcha" range but "let us work together to improve this" could be helpful.

Ms. KLEIN. Yes. I mean, we are sincere in saying that when folks are identifying areas of improvement and regulations where, there are 73 pages of a form that they do not need to be filling out, I mean, we want to hear that. And the staff that we have identified for retrospective review I think, like the rights-of-way regulations in Indian country, this is where our focus has been on the stuff that is really old and needs to be modernized.

Senator LANKFORD. Before we move on, can I ask, that economist, is that the one economist that would do the cost-benefit as well for all of this? Would that be part of what they would be

tasked to do? You said in that particular area there is one person. Would they also do the cost-benefit for retrospective review?

Ms. KLEIN. Yes, so a lot of our agencies do not have sort of a robust economics team to do the type of cost-benefit analysis that is required. We often contract that work out, and that has a number of risks associated with it, obviously. But we do not have a robust economics or regulatory staff.

Senator LANKFORD. Thank you. I apologize for interrupting.

Mr. ZEHREN. At USDA, obviously in this current budget environment, resources are an issue that have to be dealt with. Since 2010, the Department's budget has declined, is lower. We have an 11-percent reduction in staff years across the board; in some of our larger agencies, it is even greater than that when you look at it.

But the Department has stepped up and has a good record of retrospective review. As somebody indicated earlier, we are not trying to track every one of our rulemakings on the OMB report for retrospective review. These are highlighting the Department's priorities for breaking down barriers and improving our working relationship with our stakeholders and our constituents that we are serving.

But if you look at USDA, since January 1, 2004, we did 56 economically significant rules 44 of those were mandatory rules required by the Farm Bill and other legislation. Of the remaining economically significant rules, either they themselves were comprehensive reform to existing regulation, or they have been subject to a 610 review——

Senator HEITKAMP. I guess I am not asking you to kind of justify where you are. I have great affection for the work that you do, and I have great affection for your boss, the Secretary. I think he takes this stuff seriously, obviously, by the well-documented process that you go through.

My question is: If we gave you more resources, could you do a better job in retrospective review if we had a process that looked across the board not just at USDA but said, OK, USDA is also interacting with State agencies, how could we improve that? Would that actually improve the process?

Mr. ZEHREN. More resources would certainly benefit the overall performance of the Department.

Senator HEITKAMP. The point that I am trying to make is that sometimes we are penny-wise and pound-foolish. A little bit of investment in this could save those regulated in the United States a whole lot of money if we actually got to it and did it in a way that was aggressive and targeted in terms of the biggest bang for the buck and did not get engaged necessarily in philosophical differences about interpretations. And you all represent some regulations that we could today have a long conversation about. We know that. But my point is: What are we doing that does not get the attention like a fiduciary rule or like, a flaring rule, a methane rule, or, WOTUS? Those are all high-profile rules. That is a public policy debate that we are having here. But there are rules that you implement every day that have an incredible impact, and that is why we opened up the portal, CutRedTape, so we could hear about those, not just the ones that people do not like because they have a philosophical difference or a policy difference, but those things that are easy to fix if we would just get to it.

So, at DOL, what do you guys think over there?

Ms. UZZELL. I think resources are a constant challenge and it is a constant balance. It is a question for more at the Department than just myself as to whether or not additional resources would be able to be used in a specific way. I would have particular concerns about making sure we could access economists with the appropriate subject matter expertise to work on certain issues. That is a constant challenge, too. And for us, that is one of the reasons why we have a regs council inside of our Department, because we want to make sure that if we are tapping the expertise across our agencies and not just having people focus only on their own particular area.

Separating the philosophical differences on regulations from areas where you could make meaningful improvements, like fillable, fileable forms or improving the technology, could be one area of fruitful discussion. If that is an area that people are complaining about, how burdensome is a form, well, is it electronically filed? But at the same time, the counter to that, when sometimes we do raise electronic filing, is I do not have access to the computer systems, I do not use a computer on a regular basis.

So I raise that just because it is a constant balance of trying to match the interests, but I am certain that is a conversation we would be happy to continue.

Senator HEITKAMP. Yes?

Mr. NICKERSON. I think we have taken our retrospective review planning process and the actions that are on our plan very seriously. We have been adding them as they have come up, and we have gone along, and we are trying to continually make progress on the ones that are there.

I would offer I guess two additional thoughts. One is the sorts of issues that have been raised here might be ones that are most easily spotted by the stakeholders that are affected. So from that standpoint, I think the stakeholder engagement process is a good and possibly very efficient way to raise some of these concerns back to the agencies.

To your original question, I am sure that if we had more resources devoted to this, we could do more.

Senator HEITKAMP. One of the concerns that we have is that you guys are doing it kind of in discrete ways, and as Senator Lankford's questioning points out, you all have a different process, and you all look at different factors. And, what we are finding out is that the Administrator or the Secretary actually typically has final say in how this works at that very high level.

But we have a role to play, too. I mean, we have mandated in Congress through legislation a lot of this rulemaking. We have a job and a responsibility for oversight, and there are some among us who would say just leave it to the agencies. But I think that we should play a role in prioritizing some of the retrospective review. I hope that what comes out of this is not a criticism of agencies but a collaboration with agencies and Congress, because if you say, look, we cannot change that rule, that rule may be burdensome, but you guys said to do it this way, then we have a chance to go back and really do our job, which is to change the laws that have created this problem. And so we should be working together.

And so I hope that you take back to your Secretaries or your Administrators that this is not "I gotcha" here. What we are trying to do is figure out how we can collaborate to make government more responsive to the people that Senator Lankford is talking about, the people who talk to me, and once again get people engaged in governing with us as opposed to having us govern against them.

So, I really look forward to a lot of these conversations going forward.

Senator LANKFORD. That would be great.

Let me ask a question. I need somebody to prove me wrong on this. How about that? Because as I think through the process of how it filters up and how it works with the process and final decisionmaking, I think it lends toward a regulation being reviewed if it has maximum volume out there. So if it is a regulation that affects a lot of people, it quickly gets to the top because of just the sheer volume of people answering the phone. So it may have a lot of people affected, maybe big cost, maybe small cost, but it affects a lot of people.

What happens if it is a large effect on a small number of people? There are fewer calls, there are fewer letters that are coming in, because it has not affected anyone, but it is still 40 years old, it is still out of date, it still has a process. How does that bubble up? And I guess prove to me that it is bubbling up, that when you have an out-of-date regulation in need of retrospective review, but it affects a relatively small group of people, it still has a shot of getting reviewed. Ms. Klein.

Ms. KLEIN. Thank you. I think I would point to one of the earlier examples I brought up about falconry permits. I actually do not know any falconers, and I think it is a relatively small group of people.

Senator LANKFORD. I would agree.

Ms. KLEIN. But it was a regulation that it was clear needed improvement, and——

Senator LANKFORD. How long had it been in need of improvement?

Ms. KLEIN. I actually do not have the details on when it was originally enacted, but I can get that for you.

Senator LANKFORD. Let me ask the process. How did that work through, something that affects a relatively small number of people? Did it end up being an expensive review, time-consuming internally? Or did people look at it and say, to quote Senator Heitkamp, this one is common sense, this one should be a slam-dunk, let us do a cursory look at this, let us talk to some people and make the change?

Ms. KLEIN. I do not have the details on how long it took or the cost, but I think it was the latter. It was a common-sense change that could be made to the rules that was recommended to us back when we did the first wave of retrospective review and sought comments from the public about improvements that could be made. The Falconry Permit Program was one of the ones that came forward from a couple of different associations.

And so when we find opportunities like that, we want to take advantage of that, and if it is a relatively quick and easy change, we want to——

Senator LANKFORD. Is there a dual-track system that is needed here for individuals that it is a reg that is really a nuisance-type reg that is out there that has no purpose, if it is paperwork, or whatever it may be, or is redundant or is covered by States? Is there a faster process people can get in line? Because my fear is if it affects 5 million people and 5 million people are calling, that gets to the agency faster.

Ms. KLEIN. Right.

Senator LANKFORD. But the other reg may be just as out of date.

Ms. KLEIN. I can say that for us, if folks bring us those suggestions, we will look at them just as much as we would from regs that more people are talking to us about.

Senator LANKFORD. OK. That is great. I am just trying to figure out, is there a need to have a process? And we are not into building more and more systems, OK? Creating more bureaucracy does not help. I am trying to figure out how people get their voice heard when it is an obvious, common-sense issue and see if there is a system that—Ms. Uzzell, were you about to say something?

Ms. UZZELL. I think just as Elizabeth was saying, inside our Department we do not weigh whether or not—we do not disadvantage a rule change that may impact a smaller number of people or may produce fewer benefits just because that is what it is. We have gone back to our agency heads, and we said here is the entirety of the list of the comments that we received. Let us sit down and have a conversation about all of them. Which ones can you do easily? Which ones are going to be more difficult? Let us prioritize them. Let us put them on multiple tracks.

And so I do not think it is—for us, for example, I would point to the Office of Worker's Compensation Programs, duration of durable medical equipment claim, not everyone is going to be impacted by an OWCP claim that OWCP would be addressing. But that did not mean that it was less of a priority for the Department to say this is something that makes sense, is cost-effective, more cost-effective if we make these claims eligible for a longer period of time rather than making them shorter and making people come back and refile the claim.

Senator LANKFORD. How long does it take to do a retrospective review? Just give me a ball park. I know it is all over the map as far as based on the complexity of it. Give me inside-outside limits here. If it is something fairly straightforward and simple, it could take as little as how many months?

Ms. UZZELL. The challenge to that question, sir, is that a retrospective review is no different than actually developing a regulation. So for us, you have to go through the full rulemaking process. You have to comply with 12866 regardless of whether it is a retrospective review or not a retrospective review.

Senator LANKFORD. So once the reg is in place, you go through the process, so it is 2 years, small or large?

Ms. UZZELL. I mean, I really do not want to speculate. I could go back and talk to my colleagues about how long it took to do something like the durable medical change. But it is—a retrospec-

tive review is a rulemaking, and it takes the same process, and you have to comply with the same rules and regulations in the development of it, and it requires the resources of the same team of experts.

Senator HEITKAMP. But I would point out, look at USDA. When did we pass the Farm Bill? It was February or March 2014? Yes, and it was signed by the President, and you are pretty much fully implemented right now with regulation.

Mr. ZEHREN. That is correct.

Senator HEITKAMP. And so, there is a process for not delaying. Two years on some of these rules it seems to me would be way outside what my expectation would be, given that they are common sense and people would not have a lot of criticism. I mean, you would not get comment other than, "Good for you," right?

Ms. UZZELL. Sure, and, the equivalent to USDA for the Department of Labor would be our Workforce Innovation and Opportunity Act (WIOA), which we are in the process of moving as expeditiously as possible to change and update the regulations in response to the bipartisan bill that Congress passed and gave us to implement.

So I think that is a hefty rulemaking. There are ways that we can move things as quickly as possible, but they come at a cost potentially of other priorities. So just as USDA is focusing on the Farm Bill, the Department and our agency is focusing very much on that. But it may mean that something else is not going to be moving at that time.

Senator LANKFORD. We are about to run out of time because they just called votes.

Let me ask another extreme question. I have taken the one that is fairly common sense. USDA, in dealing with the School Lunch Program, I am sure your favorite topic. I cannot even imagine how many comments you all had on the School Lunch Program. I get tons of them. When I visit schools, which I do all the time, it is the No. 1 thing I hear from students and their parents. They sit down and say, "My child does not have enough food." So I talk to folks. They talk about the baked goods. They talk about how it has this really tiny amount of cornmeal on the bottom of it and so they cannot provide bagels because of the rule. It is just on and on and on, the number of questions that come in on the School Lunch Program and the nutrition programs. I know it is fairly new. It is, what, 6 years old at this point. But how do you process all of the questions on it and say we have to do something on this and filter that down?

Mr. ZEHREN. I would just like to say that that law is currently under review by the Congress, and it will be subject to reauthorization, hopefully enactment I think by the end of the summer. So it is another opportunity for USDA to review the effectiveness of rules where these rules are subject to routine Congressional oversight and reauthorization. A majority of the Farm Bill programs expire in 2018. So, our child nutrition programs are subject to reauthorization, and that discussion is happening now with Congress about how those questions should be addressed.

Senator LANKFORD. How do you process that many comments? That was really my question, when they come in that fast, that many.

Mr. ZEHREN. The agencies have a number of tools available to address them, such as regulatory workshops, to take in electronically their comments and analyze those comments electronically. For Food and Nutrition Service (FNS), they have been working closely with groups across the country. They have held over 50 to 60 meetings with organizations and States, who have an interest in this to identify those issues and then provide alternatives to it. So it is one of those aspects where you have to go back. It is just robust and constant stakeholder involvement and ensuring that we are developing programs that, address those needs. And they will be resurfaced as we go through this reauthorization.

Senator HEITKAMP. Well, I just want to thank you. This has been very helpful as we kind of move forward with our ideas. I personally believe that there is some advantage to a collaboration between Congress looking at kind of a commission style retrospective review, trying to get some kind of normalization, because each one of you have described a process that is different within your agencies. So even though there may be broad policy guidelines, the process is different. There may be things that we think should be included, best practices that we have heard here that we think would benefit other agencies. You may not have enough resources to do those. And so, I look forward to an ongoing discussion about this and trying to figure out what is the low-hanging fruit that once we are able to do it, we can say we are listening to the American public about these burdens, that we are participating together, we are the adults in the room, they are our bosses, and we are going to respond to these concerns without jeopardizing safety for food or without jeopardizing the quality of our air, without jeopardizing safe workplaces, all the major missions that you have.

So thank you, Mr. Chairman.

Senator LANKFORD. Thank you, and thank you as well. Let me reiterate—I agree with that comment on that, and the goal of it is I think the American people are not opposed to a regulatory scheme. They really do want clean food, clean air, clean water. They get that. They want a safe work environment. But they want to make sure it actually makes sense. People that fill out forms all day and cannot figure out why they are filling these forms out, and it is not a fulfilling job for them. It is a job for them, and they want to be able to be engaged in something. And the moment that people feel like they work for us rather than we work for them, it is a toxic environment, and it does not get better. A good, solid retrospective review process helps that where people have a sense of hope, "If I call somebody at one of these agencies"—which clearly they do, that message really gets through, somebody really addresses it, and it is in the process of getting fixed.

So for us it is priority setting. How do we help establish priorities back to the agencies to say these are essentials, that we are going to actually go through a review process and the method to do that, and then be able to determine for us what does that look like in the days ahead as far as the structure that we lay out to the different agencies.

So I appreciate all your testimony. There will be questions for the record. I will leave the record open for 14 days for any indi-

vidual that wants to submit another statement for the record or for any questions, and then we will pass those on to you.

A final statement?

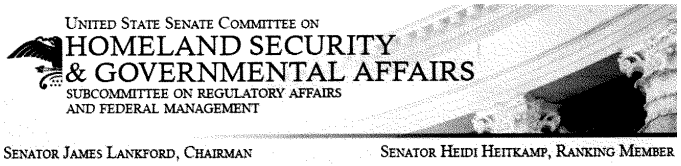
Senator HEITKAMP. I just want to say for the record we were the nice Committee.

Senator LANKFORD. We will send all of our hard questions by mail. [Laughter.]

So we will take it from there. I appreciate very much your work. Thank you. We are adjourned.

[Whereupon, at 11:15 p.m., the Subcommittee was adjourned.]

APPENDIX



SENATOR JAMES LANKFORD, CHAIRMAN SENATOR HEIDI HEITKAMP, RANKING MEMBER

November 5, 2015

Opening Statement of Senator James Lankford

Homeland Security and Governmental Affairs Subcommittee on Regulatory Affairs and Federal Management Hearing titled:

"Agency Progress in Retrospective Review of Existing Regulations"

Good morning. This is the sixth in a series of hearings and roundtable discussions in which the Subcommittee continues to examine the issues and solutions surrounding today's regulatory state. Today, we will hear from witnesses representing USDA, Labor, Interior and EPA about their agencies' retrospective review programs: their progress reviewing existing regulations, the challenges they have encountered, and their next steps.

Every president since President Carter has urged agencies to initiate a retrospective review or "look-back" of their existing regulations. This Administration is no different; in 2011, President Obama issued Executive Order 13563. Executive Order 13563 directs agencies to develop and submit to OMB's Office of Information and Regulatory Affairs a plan for periodic review of existing significant regulations to determine whether they should be modified, streamlined, expanded or repealed. In 2012, Executive Order 13610 urged agencies to take action to institutionalize regular assessment of significant regulations. However, experts have questioned how rigorous or effective these efforts have been.

Retrospective review of regulations is important. Changing circumstances and technological improvements may render some regulations outdated and ineffective. Initial agency estimates of potential costs and benefits of an action can prove incorrect. Therefore, we must ensure that agencies undertake retrospective reviews of current regulations so that we know they continue to serve the American people and consistently reflect the least burdensome option to achieve their desired effects.

Because retrospective review of regulations is so important, in July Ranking Member Heitkamp and I proposed legislation to ensure that agencies think about retrospective reviews from the outset. S.1817, The Smarter Regulations through Advance Planning and Review Act, would require agencies promulgating major rules to commit to a timeframe to review the regulation, a plan for that review, and the information they will collect to facilitate that review.

This is just one of three bipartisan common sense proposals that Senator Heitkamp and I proposed in July to improve the regulatory process and make it more accountable to the American people. All three proposals recently passed through committee with wide support.

Although we hope to strengthen retrospective reviews in the future, today we are here to discuss the current retrospective review effort and the progress agencies have made. We look forward to hearing from agency officials about their experiences and what else we could do to help facilitate these very important reviews. I appreciate our witnesses' written statements and look forward to their testimony.

OPENING STATEMENT FOR SEN. HEIDI HEITKAMP

Regulatory Affairs and Federal Management Subcommittee hearing, November 5, 2015:
"Agency Progress in Retrospective Review of Existing Regulations"

Thank you Chairman Lankford for organizing this hearing today to allow us the opportunity to examine a very important aspect of our regulatory system – retrospective review. I am very interested in our witnesses' insight, and how best to make retrospective review a stronger part of the culture at all regulatory agencies.

A key goal of mine today is to closely examine how retrospective review is working at several agencies so we can improve the process moving forward.

That is why HSGAC committee recently passed S. 1817, the Smarter Regs Act, with the support of Chairman Lankford. This commonsense and bipartisan bill requires federal agencies to include, as a part of every proposed and final major rule, a framework that will provide a timeframe in which the rule would be reviewed, the data and methodology the agency will use to conduct such reviews, and the method in which the agencies will collect such data.

My thinking behind this bill is to encourage agencies to do the tough thinking early on in the rulemaking process, which will ultimately save the agency and the federal government time and resources. Under current law, agencies and Executive departments are required to conduct a cost-benefit analysis before promulgating a new major rule, and have the results of that analysis reviewed by the Office of Information and Regulatory Affairs.

It makes sense to me that, while agencies are collecting data to determine if a rule is necessary, that the agency also develops a framework to examine if the rule is meeting its regulatory objectives in the future.

In reading your submitted testimony in preparation of this hearing, I am glad to see that your agencies consider retrospective review to be a critical part of your regulatory missions. By making retrospective review a part of your ordinary regulatory functions, we help ensure that we have the most efficient and effective regulatory system possible. I look forward to learning more about the challenges with retrospective review and how best we can improve this important effort.

I think we all agree, for our nation to be successful, for our citizens to be able to work hard and provide for their families, for our nation to be safe and secure, we need a responsive regulatory system that produces the highest quality regulations. Retrospective review can help us meet that goal by improving or deleting older regulations which don't meet their objectives anymore.

This is important not just for Executive Agencies, but for Congress as well. We need to make sure agencies look back at their work, so Congress can know that our Executive counterparts are the most efficient and effective way of accomplishing our legislative goals.

All this is why I am excited for today's hearing. I look forward to hearing from our witnesses, as well as my colleagues, as we continue to move forward in improving on our regulatory system, and finding common sense solutions to accomplishing our aligned regulatory interest.

TESTIMONY OF ELIZABETH KLEIN
ASSOCIATE DEPUTY SECRETARY
U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENT AFFAIRS
SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT
UNITED STATES SENATE

"Agency Progress in Retrospective Review of Existing Regulations"

November 5, 2015

Chairman Lankford, Ranking Member Heitkamp, and members of the subcommittee, thank you for the opportunity to appear before you today to discuss actions the Department of the Interior (Department) is taking to review and improve our existing regulations to ensure that they are efficient, functional, transparent, and less burdensome.

The Department recognizes the importance of establishing and maintaining a culture of retrospective review and has taken a number of steps to ensure that review takes place, while continuing to advance our mission of managing our natural resources to benefit all Americans, along with upholding Federal trust responsibilities to American Indians and Alaskan Natives.

Following President Obama's issuance of Executive Orders 13563 and 13610, the Department developed a robust plan to ensure that our offices and bureaus with regulatory responsibilities are incorporating retrospective review into their annual regulatory planning processes. In doing so, we were guided by the principles in Executive Order 13563, which directs agencies to use the best available science; allow for public participation and an open exchange of ideas; promote predictability and reduce uncertainty; use the best, most innovative, and least burdensome tools to achieve regulatory ends; take into account benefits and costs; and measure and improve results of regulatory requirements. The Department, in accordance with Executive Orders 13563 and 13610, continues to make progress in fulfilling our commitment to regulatory review, and my testimony will highlight some of the efforts we have undertaken to date.

A key element of Executive Order 13563 requires agencies to develop plans to review their existing regulations in order to explore whether any rules "should be modified, streamlined, expanded, or repealed as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives." In response to this requirement, the Department published our Plan for Retrospective Regulatory Review (Plan) in August 2011. Through this Plan, the Department made retrospective review an explicit and permanent part of our planning process. Each Department bureau and office is asked to identify at least one regulation for review each year. In considering regulations for review, we ask them to consider if a rule (1) is obsolete due to changes in the law or practice; (2) is duplicative or incompatible

with other rules; (3) has been reviewed in the last 10 years; or (4) is considered burdensome or unnecessarily restrictive based upon public or internal comments.

The Department also shares your goal, and that of the President, of increasing public interest and engagement in the process of improving our regulations. We recognize that stakeholders, non-profit organizations, and the regulated public bring unique and valuable insight into our regulatory activities and may have information that is not readily available or apparent to the Department. This information can help us improve or more appropriately tailor our regulations to accomplish their intent.

The Department is working to foster greater public participation and an open exchange of ideas through the publishing of our Public Engagement Plan in December 2014. Consistent with our Public Engagement Plan, we have published Federal Register notices asking the public for additional suggestions and input. Furthermore, we have dedicated space on our web site to disseminate information regarding our retrospective regulatory review efforts and have established a permanent email address where members of the public can engage with us 24 hours per day, 365 days per year, on how we can continue to improve our regulations.

In addition, many of the bureaus and offices within the Department interact with stakeholders every day through one-on-one conversations that take place in the normal course of doing business. Our employees work closely with regulated parties and other interested parties. These stakeholders share their ideas about how we might make our regulations work better, and these conversations influence what rules have been put forward by the bureaus and offices for retrospective review.

We have submitted semi-annual reports to the Office of Information and Regulatory Affairs on our progress with respect to retrospective regulatory review since 2011. During this time, the Department has added 32 actions for retrospective review. We have completed work on 12 of these regulatory actions.

Through the regulatory review framework, we have made significant progress toward meeting the goals established by Executive Order 13563. Many of our updated rules have removed outdated requirements, streamlined processes, or modernized how we work with the public to manage our public lands, protect endangered species, responsibly develop our Nation's energy resources, and protect National treasures for this and future generations.

As we continue to carry out the Administration's commitment to improving regulation, while also implementing our policy priorities, we have turned the focus of our retrospective regulatory review efforts to regulations that promote the trust relationship between Indian tribes and the Federal government. For example, we recently completed work on a final rule revising regulations governing the process for Federal acknowledgement of Indian tribes. Our aim was to maintain the integrity of that process while trying to reduce the extraordinarily long amount of time the process has taken in the past. To help bolster tribal sovereignty and dignity through economic development, we are working on updating and making less burdensome regulations on obtaining rights-of-way across Indian lands. This should help increase tribal access to technology such as fiber optic lines that are vital to participation in a wired 21st century

economy. We are also reviewing rules to improve access to quality housing in Indian country and rules to protect the welfare of Indian children in custody proceedings. By reviewing these regulations, the Department aims to address the needs of Native Communities, fulfill the Federal trust responsibility to American Indians and Alaskan Natives, and ensure our regulations are effective and efficient.

It is also worth noting that not all rules are appropriate for retrospective review; and review for the sake of review would be unduly burdensome to agencies and an inefficient use of resources. To ensure an efficient regulatory system, agencies need to maintain discretion to prioritize which rules necessitate review. At the Department, we seek to identify rules for retrospective review that further our mission. With limited resources, it is important to prioritize the rules we select for review.

In conclusion, the Department has an obligation to manage and protect America's public lands, protect endangered species, encourage responsible development of our energy resources, preserve our National treasures for the enjoyment of this and future generations, fulfill trust responsibilities to American Indians and Native Alaskans, and develop and manage scarce water resources in the West. We must do all of this in a way that works for the American public. We understand that we need to regulate in a way that is smart, efficient, effective and not more burdensome than necessary to meet our goals. We look forward to continuing our efforts to meet these challenges.

Thank you for your time and attention. I would be happy to answer any questions you may have.

Statement by
Christopher Zehren
Deputy Director, Office of Budget and Program Analysis
United States Department of Agriculture
Committee on Homeland Security and Governmental Affairs
Subcommittee on Regulatory Affairs and Federal Management
November 5, 2015

Chairman Lankford, Ranking Member Heitkamp, and Members of the Committee, I am pleased to have this opportunity to discuss the Department of Agriculture's efforts to reduce regulatory and paperwork burdens on the American people, and to provide easier public access to USDA's programs.

Under the Obama Administration and Secretary Vilsack's leadership, streamlining our processes and optimizing efficiency has been a critical element of our strategy to better serve our customers. We have incorporated these goals both through our formal retrospective review process and implementation of key periodic reauthorizations passed by Congress.

Retrospective Review

Secretary Vilsack has made improving the effectiveness of regulations and administrative processes a priority for USDA. Since President Obama issued Executive Orders 13563 and 13610 in January 2011, and May 2012, respectively, USDA has initiated a rigorous, open, and robust review of its regulations, data sharing, and paperwork collections that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify streamline, expand, or repeal them accordingly. As a result, USDA has initiated 22 priority reviews, 9 of which have been completed.

Based on USDA's evaluation and public input, USDA released its Final Plan for Retrospective Analysis on August 18, 2011. The final plan identified nine priority initiatives to significantly reduce regulatory and paperwork burdens. These include: Prior Label Approval System: Generic Label Approval; Electronic Export Application and Certification Fee; National Environmental Policy Act Efficiencies; Rural Energy for America Program; Business and Industry Loan Guaranteed Program; Water and Waste Loans and Grants; Community Facilities Loan and Grants; Supplemental Nutrition Assistance Program; and Child Nutrition Programs – National School Lunch Program and School Breakfast Program.

To ensure the highest priority needs continue to be met, USDA senior policy officials conduct a top-to-bottom regulatory review twice each year as part of the development of the USDA Unified Regulatory Agenda. As part of this review, Agencies are directed to identify specific topics, regulations, and paperwork collections that are outmoded, ineffective, or excessively burdensome, particularly those identified by stakeholders. Agencies are also directed to review economically significant rules issued over the last 10 years and the most burdensome paperwork collections to identify potential areas of reform.

USDA invited the public to participate in its review through the publication of a Request for Information (RFI) in the Federal Register on April 20, 2011. USDA also invited the public to participate through its Open Government Web site. Through this effort, over 2,100 public comments were received from a broad range of stakeholders, including individuals, regulated entities, trade groups, and USDA employees. On March 17, 2015, the Department published a second USDA-wide RFI in the Federal Register, and provided agencies with regulatory look-back talking points for use at scheduled public engagement events. In addition, USDA's largest regulatory and service delivery organizations conducted independent public outreach activities employing a variety of mechanisms, including social media and traditional RFIs to continue seeking input from the public.

For example, Rural Development hosted a nationwide webinar on its regulatory priorities on June 13, 2011. This was in addition to planned town hall meetings hosted by RD state directors during the month of June at rural community colleges. Similarly, on July 19, 2011, the Risk Management Agency (RMA) and the Farm Service Agency (FSA) published an RFI in the Federal Register seeking input on improving common acreage reporting processes, and on July 21, 2011, RMA posted an entry on USDA.gov seeking input on establishing a Single Data Reporting System. The Food Safety and Inspection Service (FSIS) asked its stakeholders to identify potential improvements in information collection procedures to increase the quality of data available to inform and support regulatory decision making.

All comments received from our stakeholders regarding USDA's retrospective review efforts, whether through formal solicitations or routine outreach and stakeholder communication, are directed to the appropriate agency, reviewed, and taken into consideration as agencies at USDA develop their annual regulatory program.

The Department's July 2015 status update introduced two new burden reduction initiatives: Food and Nutrition Service (FNS) final rule for Simplified Cost Accounting and Other Actions to Reduce Paperwork in the Summer Food Service Program (SFSP), and Rural Business-Cooperative Service (RBS) interim rule for Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance. The FNS rulemaking extends simplified cost accounting and reporting procedures to SFSP sponsors in all States, and eliminates the cost comparison requirements for determining payments to sponsors, thereby reducing the paperwork burden by 27,184 hours. RD's interim rule implements a new 2-phase application process that is expected to reduce the overall paperwork burden by approximately 30,000 hours.

Periodic Reauthorizations

Periodic changes in legislative authority also contribute to USDA's effort to modernize its regulations and reduce paperwork burdens. As these periodic reauthorizations are passed on a rolling basis - roughly every five years -, it creates an ongoing opportunity for our stakeholders and Congress to directly weigh in on many of the major programs administered by the Department and to provide feedback on regulations in place to implement the programs being reauthorized.

For example, the Agricultural Act of 2014 (Farm Bill) and the Healthy, Hunger-Free Kids Act (HHFKA) of 2010, have both introduced numerous program reforms that eliminate obsolete anc underperforming programs, simplify the administration of programs, and improve program outcomes. While not formal retrospective reviews, implementing these periodic authorizations create ongoing opportunities to evaluate current regulations and rules to ensure they are best serving our customers. The rapid and effective implementation of these laws has been the highest priority for the Department.

As part of our efforts to reduce burden and increase access to programs, USDA has invested significant resources in information technology to streamline application processes to increase access to USDA programs. Prime examples are the Acreage and Crop Reporting Streamlining Initiative (ACRSI) and the Conservation Delivery Streamlining Initiative (CDSI) that will transform the way we interact and conduct business with agricultural producers when fully implemented.

Another example of significant burden reduction was the implementation of direct certification for school meals. This process eliminated paper-based applications for many low-income families. Under the revised process, States and school districts directly certified 12.3 million children at the start of school year 2012-2013, an increase of 740,000, or 6 percent, from the previous school year and resulted in a burden reduction of approximately 113,000 hours.

Conclusion

I would again like to thank the Committee for the opportunity to testify on the Department's regulatory review processes. The Department is proud of our efforts to reduce regulatory and paperwork burdens on the American people, and to provide easier public access to USDA's programs. I would be happy to answer any questions.

STATEMENT OF
MEGAN J. UZZELL
ASSOCIATE DEPUTY SECRETARY
U.S. DEPARTMENT OF LABOR

BEFORE THE
SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

LEGISLATIVE HEARING ON AGENCY PROGRESS IN RETROSPECTIVE REVIEW OF EXISTING REGULATIONS

THURSDAY, NOVEMBER 5, 2015

Introduction

Mr. Chairman and members of the Subcommittee, I am Megan Uzzell, Associate Deputy Secretary at the U.S. Department of Labor. I am pleased to testify before you today on the Department's efforts to conduct a robust retrospective review of our existing regulations as informed by significant outreach to a wide variety of stakeholders.

The Department administers and enforces more than 180 federal laws. These mandates and the regulations that implement them cover many workplace activities for about 10 million employers and more than 120 million workers. The Department's regulatory agenda is designed to bring opportunity, economic security, and safe workplaces to our Nation's working families, job-seekers, and retirees.

The Department is committed to retrospective review as an important and effective tool in advancing our agenda. About 1 in 5 of the items on our Department's current regulatory agenda, or almost 20 percent are retrospective reviews. Since 2011 the Department has completed 14 retrospective reviews and 15 more remain on the Department's July 2015 semi-annual progress report. DOL has estimated a cost savings of more than $3 billion over the next five years for the subset of the completed reviews for which such analysis has been completed. In addition, the Department has deleted more than 260 pages from the CFR.

These efforts may reduce burden, withdraw duplicative or unnecessary items, align regulatory standards with industry standards or modernize outdated standards. Suggestions for retrospective review items are sought from a wide variety of sources and through regular engagement, both with stakeholders and our own employees. The Department is also making efforts to develop retrospective review as a regular part of our regulatory work through the inclusion of such reviews in the body of our regulatory proposals.

Today, I would like to tell you about the range of retrospective review efforts that the Department has pursued in this Administration. In doing so, I will summarize our retrospective review efforts since the issuance of President Obama's 2011 Executive Order (E.O.) 13563, "Improving Regulations and Regulatory Review," highlighting a number of completed initiatives and a few that are currently underway.

A Comprehensive Approach

Following the January 18, 2011, issuance of E.O. 13563, the Department developed a comprehensive updated approach to retrospective review. The Department launched an interactive website to provide the public an easily accessible avenue to suggest both general review methodologies and particular regulations for review. Over 940 online users submitted 113 individual recommendations. These public comments[1] informed the creation of the Department's first Retrospective Analysis of Existing Rules Plan in August 2011, from which we have developed a series of eight semi-annual progress reports that list those retrospective review initiatives that have been completed, those that remain ongoing, and those which have been newly added. All of the Department's reports are available on our website.

Completed Retrospective Review Initiatives

Since the issuance of E.O. 13563, the Department has completed 14 retrospective review initiatives listed in these reports, each of which resulted in updates to the Code of Federal Regulations. An additional 15 retrospective review initiatives remain in progress on the Department's most recent July 2015 semi-annual progress report, including three of the five begun thus far in 2015.[2]

Through these reviews, the Department has promoted a variety of policy goals. One area of focus has been the identification of duplicative, unnecessary, or inconsistent regulations that prove burdensome for employers and do not provide meaningful protection for workers. The Department's Occupational Safety and Health Administration (OSHA) has launched a series of "Standards Improvement Projects" (SIP) regulatory actions that remove unnecessary provisions and update out-of-date requirements, thus reducing the costs or paperwork burden for affected employers. OSHA has published three such SIP final rules and is currently developing a Notice of Proposed Rulemaking to implement SIP Phase IV.[3] In 2011, the Administrative Conference of

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[1] Available at http://www.regulations.gov/#!docketDetail;D=DOL-2014-0006. (Last visited Oct. 20, 2015).

[2] The Department has already completed the Longshore Transmission of Documents and Information rulemaking by publishing a Direct Final Rule that took effect on June 10, 2015, because no significant adverse comments were submitted. Likewise, OSHA's Streamlining State Plans Direct Final Rule took effect on October 19, 2015 for the same reason.

[3] SIP Phase I was published in the *Federal Register* on June 18, 1998, 63 Fed. Reg. 33,450, http://www.gpo.gov/fdsys/pkg/FR-1998-06-18/pdf/98-15936.pdf; SIP Phase 2 was published on January 5, 2005, 70 Fed. Reg. 1,112, http://www.gpo.gov/fdsys/pkg/FR-2005-01-05/pdf/04-

the United States (ACUS) recognized OSHA with the Walter Gelhorn Innovation Award Honorable Mention for nearly a decade and a half of utilizing SIP as a means to revise, update, and remove occupational health and safety standards that are outdated, obsolete, or unnecessarily burdensome for employers.

The Department has also pursued a number of retrospective reviews to reduce paperwork burdens, consistent with the President's 2012 issuance of Executive Order 13610, "Identifying and Reducing Regulatory Burdens." For example, OSHA identified for review a regulatory requirement that employers document mandatory weekly inspections of mechanical power presses. OSHA determined that this requirement was not needed for employers to maintain safe workplaces, and accordingly published a final rule eliminating the requirement. The elimination resulted in an estimated 613,600 hours of reduced paperwork burden per year without adversely affecting OSHA's inspections. Earlier this year, the Department's Office of Workers' Compensation Programs published a direct final rule that allows injured workers, their survivors, employers, insurance carriers, and OWCP to communicate and transmit documents electronically regarding claims handled by the Longshore program. In 2012 OSHA finalized a rule to conform its Hazard Communication Standard to the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals. By ensuring manufacturers do not have to produce multiple warning labels or Safety Data Sheets for different countries, OSHA estimated this rule would-result in both productivity improvements for businesses that regularly handle, store, and use hazardous chemicals and cost savings for businesses, while increasing safety and health protections for workers exposed to hazardous chemicals.

Other retrospective review initiatives modernize regulations that may have fallen behind national consensus standards set by industry bodies. For example, OSHA has published final rules updating its Acetylene, Head Protection, and Signage standards to match national consensus standards and is currently pursuing a similar rule involving Eye and Face Protection.

Still other retrospective review initiatives simply involve removing outdated and confusing rules from the Code of Federal Regulations, thereby streamlining requirements for the regulated community. For example, in 2013, the Department's Employment and Training Administration rescinded a trio of outdated regulations implementing temporary nonimmigrant worker visa programs for which statutory authority had lapsed, and OSHA recently enabled the removal of more than a hundred pages of regulations that apply to its OSHA-approved State Plans, which will help ensure stakeholders can find the latest information on a public OSHA website that is regularly updated to describe each state plan and any important changes –unlike the CFR which may be out of date between publications.

Taken together, these initiatives reduce the burden hours on the regulated community through the elimination of paperwork requirements, promote savings for employers associated with productivity improvements, avoid public confusion by deleting obsolete regulations, and align regulatory standards with accepted industry standards.

28221.pdf; and SIP Phase III was published June 8, 2011, 76 Fed. Reg. 33,590, http://www.gpo.gov/fdsys/pkg/FR-2011-06-08/pdf/2011-13517.pdf.

The Department has also taken steps to include retrospective analysis requirements in new regulations to facilitate evaluation of their impact. For example, the Department's Mine Safety and Health Administration announced in its 2014 Respirable Dust Final Rule that it will conduct a retrospective review to evaluate the data collected using continuous personal dust monitors in 2017. OSHA's Final Rule on Recordkeeping and Reporting Requirements – moving from the Standard Industrial Classification System to the North American Industry Classification System for determining which industries are low-hazard and potentially exempt from recordkeeping requirements – also includes a commitment to conduct a retrospective review of the agency's recordkeeping regulations. And in its recent Notice of Proposed Rulemaking proposing to modernize the Fair Labor Standards Act's Overtime Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees, the Department's Wage and Hour Division proposed to consider a future retrospective review of the rule after it is finalized and implemented.

Engagement from Diverse Stakeholders

The Department continues to be interested in identifying new opportunities for retrospective reviews. Earlier this year, building upon prior efforts, the Department launched a robust, technology-driven effort to identify such prospects, aiming to obtain input on promising themes and specific targets for review and reform from a wide array of stakeholders. In particular, the Department established two initiatives to seek input from interested parties on developing smarter regulations.

First, on January 29, 2015, the Department announced a public-facing website called "Shaping Smarter Regulations" in its electronic newsletter, which reaches over 450,000 subscribers, and published a subsequent *Federal Register* notice promoting the website in February. A number of the Department's agencies also sent email blasts to alert a broad group of diverse stakeholders, directing them to the Shaping Smarter Regulations website. This stakeholder engagement website posed questions designed to spark dialogue and to elicit ideas on a range of topics, including: tools that could be used to prioritize regulations for review; strategies that could be used to increase the flexibility of regulations; and measures that could be employed to ensure scientific integrity of data. By the close of the comment period, 718 users had registered with the website, and 65 individual recommendations had been submitted. Stakeholders could vote on ideas that had been submitted, and over a thousand votes were ultimately cast on the various recommendations. The recommendations and stakeholder responses remain available for review on the Department's website.[4]

Second, because our own employees are in a prime position to identify regulations in need of revisions, the Department launched a program encouraging them to do so. This avenue has proven productive. For example, OSHA's revisions to the mechanical power press recordkeeping requirement, discussed above, resulted from a suggestion by one of the agency's employees through the internal recommendation process.

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[4] *See* Shaping Smarter Regulations, http://www.dol.gov/regulations/regreview/. The original *Federal Register* notice is available at 80 Fed. Reg. 5,716 (Feb. 3, 2015), http://www.gpo.gov/fdsys/pkg/FR-2015-02-03/pdf/2015-01916.pdf.

The Department is undertaking efforts to directly address stakeholder and employee suggestions in a number of specific areas. For example, several stakeholders, both internal and external, recommended that the Department reform its Permanent Labor Certification (PERM) program. This is the program through which our Employment and Training Administration certifies that the employer has met the labor market test required under law in order to permanently employ a foreign worker: (a) that there are not sufficient U.S. workers able, willing, qualified, and available to do the job at the time and location required; and (b) that employment of the foreign will not adversely impact wages and working conditions of U.S. workers in similar positions. While our PERM regulations are only ten years old, the labor market has changed markedly in the last decade, and advances in technology and hiring have changed recruitment practices. Accordingly, last November, we announced a series of listening sessions with industry, advocates, and labor stakeholders, along with our own employees, to assess whether these regulations should be updated.

Through both of these processes – our PERM-specific listening sessions and our retrospective review engagement effort – stakeholders identified a number of areas of the current PERM program that concerned them. The Department took these comments seriously, announcing in our February 2015 Retrospective Review Report that ETA plans to undertake a reform of the PERM program. We are currently engaged in a comprehensive review of the PERM program based on external comments and an internal review by our staff. The Department intends to publish a new regulation to better align the program with the objectives of the immigration system and the needs of workers and employers. Though every one of the individual reforms may not result in burden reduction, as a package, we intend to use this effort to modernize the rule to account for changes in the labor market and advances in technology.

A second area where the Department is undertaking efforts to address stakeholder suggestions involves OSHA's whistleblower program. The Department received a suggestion to ensure that potential whistleblowers understand OSHA's role in protecting whistleblowers under substantive laws enforced by other agencies. OSHA has engaged with other a number of federal agencies to link to its Whistleblower website to inform potential whistleblowers of their protections.[5]

In addition, on April 20, 2015, OWCP published a bulletin addressing a suggestion that it would be more cost effective for the agency to grant durable medical equipment rentals to injured employees for a full year, rather than the previously available six-month period, in certain situations under the Energy Employees Occupational Illness Compensation Program Act.[6]

The overlap between the suggestions from stakeholders and our existing regulatory efforts suggests the Department's efforts to gather stakeholder feedback are working well. The Department's agencies already use a variety of such mechanisms. OSHA alone uses formal

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[5] Environmental Protection Agency; Federal Aviation Administration; Department of Health and Human Services; Employee Benefits Security Administration; and the Department of Defense: Office of the Inspector General.

[6] http://www.dol.gov/owcp/energy/regs/compliance/PolicyandProcedures/finalbulletinshtml/EEOICPABulletin15-02.htm

advisory committees, informal listening sessions, a process to petition for new rulemakings, Small Business Regulatory Enforcement and Fairness Act panels, pre- and post-hearing comment periods, and a practice of issuing regular Requests for Information.

For example, OSHA's SIP IV initiative mentioned above has been informed by both advisory committee recommendations and RFI responses. Based on such input, OSHA has identified a number of areas for possible burden reduction or more general modernization, improvement which can be made without adversely affecting workers' safety and health. For instance, some of OSHA's health standards currently require periodic chest x-rays. When the agency published these standards, such routine screening for lung cancer was appropriate clinical practice. However, since then, large studies with many years of follow-up have failed to show a benefit from this type of screening, either on lung cancer incidence or mortality. In addition, OSHA currently requires x-rays to be stored on film – an outdated requirement in an era of digital x-ray technology. Likewise, OSHA requires employers to post telephone numbers for physicians, hospitals, or ambulances at worksites located in areas where 911 emergency dispatch services are not available. However, since this regulation was adopted in 1971, 911 emergency dispatching services have been adopted in virtually all counties across the country and are available on most mobile phones networks. The requirements could be modernized for those limited areas where local dispatchers lack locating functions.

Conclusion

Going forward, a wide variety of internal and external stakeholders will continue to help refine our current and future plans for retrospective review of significant regulations. The Department is also an active participant in the broader conversation about retrospective review, participating in the Administrative Conference of the United States and attending other conferences, such as the Penn Program on Regulation's dialogue on regulatory excellence. The Department remains committed to our broad efforts to pursue retrospective review while bringing opportunity, economic security and safe workplaces to our nation's working families, job-seekers, and retirees.

TESTIMONY OF
BILL NICKERSON, ACTING DIRECTOR
OFFICE OF REGULATORY POLICY AND MANAGEMENT
U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE

SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS
SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL MANAGEMENT

AGENCY PROGRESS IN RETROSPECTIVE REVIEW OF EXISTING REGULATIONS

November 5, 2015

Good morning Chairman Lankford, Ranking Member Heitkamp and members of the subcommittee. I am Bill Nickerson, Acting Director of the Office of Regulatory Policy and Management in the Office of Policy at the U.S. Environmental Protection Agency. I am pleased to be here today to discuss EPA's record on regulatory retrospective review. We have made great progress in this area over the past four years and look forward to doing even more in the future. Under Executive Order (EO) 13563, "Improving Regulation and Regulatory Review," the EPA conducted extensive public outreach in 2011 to seek input on whether and how to streamline, expand or repeal existing regulations. This outreach included twenty public meetings as well as a number of web-based dialogues. The agency also published two *Federal Register* notices to solicit public feedback on the agency's plan for the review of existing regulations. It received more than 1,400 suggestions. Since 2011, the EPA has maintained an open docket for public feedback on its retrospective review plan and subsequent progress reports.

The agency has conducted fifty retrospective reviews under EO 13563. Twenty-two of these reviews have been concluded, resulting in the amendment of nine regulations. For example, one action that was completed was amending the Spill Preventation, Control, and Countermeasure (SPCC) regulations. Another action amended regulations related to the emission control systems that capture harmful fuel vapors when you are filling your gas tank, or onboard vapor recovery. Together these two actions will result in approximately $250 million per year in cost savings. The remaining reviews have required other actions, including the revision of agency guidance or evaluation criteria to affect how regulations are implemented. Since 2011, EPA has continued to

expand our retrospective review activities. In July, we added six new actions to our retrospective review plan.

The EPA uses a thorough process for soliciting regulations for reviews. We ask for nominations from the public, agency staff members, and other federal agencies. These nominations are referred to the appropriate agency office for consideration. Decisions on the review of regulations take into account consistency with statutory requirements and agency priorities, the principles of EO 13563, and the availability of agency resources.

Earlier this year, EPA redoubled its efforts to solicit public input on retrospective reviews. At a quarterly meeting with intergovernmental organizations including the Environmental Council of States, the National Governors Association, and the National Conference of State Legislatures, we reached out to state and local governments on potential opportunities to streamline existing processes and reduce regulatory burden. In March, EPA published a notice in the *Federal Register* seeking public input on how it might promote retrospective review and regulatory modernization through advanced information technology. The agency received twenty-seven public comments on this topic and is currently in the process of reviewing these comments for potential future activities for retrospective review, streamlining, and/or transition to electronic reporting.

The EPA's effort to implement EO 13563 is not the sole pathway for the review of existing regulations. The agency has long conducted retrospective reviews of its actions. Regular assessment of past regulatory actions is integral to the EPA's core mission and responsibilities and is often mandated by statute. Of the approximately 120 active actions listed in the EPA's Spring 2015 Semiannual Regulatory Agenda, roughly 60 percent are reviews of existing regulations. For example, the EPA is required to review National Primary Drinking Water Regulations every six years under the Safe Drinking Water Act. The Clean Air Act requires the review of National Ambient Air Quality Standards actions every five years; New Source Performance Standards and Maximum Achievable Control Technology standards must be reviewed every eight years.

The EPA is committed to protecting human health and the environment and is continually improving the processes to achieve these protections. The agency regularly engages stakeholders on our retrospective review efforts to identify opportunities for streamlining existing processes, improving our regulations, and increasing use of innovative tools that ease and facilitate compliance. The EPA assesses progress on existing retrospective review activities semiannually and provides this information to the public on our website, at www.epa.gov/regdarrt/. We maintain an open comment docket for any public feedback on our semiannual progress reports and are responsive to all public comments received related to retrospective review. When writing new regulations, the EPA is committed to designing reporting requirements that help facilitate later evaluation of rule effectiveness in improving environmental quality.

The EPA has a long history of thoughtfully examining our regulations to make sure they are meeting the needs of the nation in an efficient and streamlined manner. Further, we have a robust record of working with states, tribes, local governments, the regulated community, and other stakeholders to ensure we coordinate our efforts where possible.

Thank you Chairman Lankford, Ranking Member Heitkamp, and members of the subcommittee for this opportunity to discuss the agency's efforts related to retrospective review of regulations. I will be happy to answer your questions.

Post-Hearing Questions for the Record
Submitted to Ms. Elizabeth Klein
From Senator James Lankford

"Agency Progress in Retrospective Review of Existing Regulations"
November 5, 2015

Senator Lankford

On Consulting with the Small Business Community and State Regulators

1. In your testimony, you stated that Interior "had not at this point engaged specifically to the small business community" but stated that this was an area of improvement for the Department. What actions does the Department intend to take to better engage this community?

   DOI Response: The Department continues to work towards our goal of increasing public interest and engagement in the process of improving our regulations. We value the unique perspective that small businesses can provide into our regulatory activities and we continue to work towards improving small business participation through our Public Engagement Plan. Through our ongoing public outreach efforts, we hope to build upon the feedback we receive from small businesses during the implementation of regulations.

   Although our outreach has not been directed to any specific groups, we are continually exploring avenues to target the small business community in our outreach efforts, while ensuring that we value comments from all sources and do not weigh one source over another. We welcome engagement with the small business community and we look forward to working with them and this Committee to strengthen our outreach efforts.

2. How could your department better leverage the insights and resources of the Small Business Administration's (SBA) Office of Advocacy?

   DOI Response: The Department benefits from the input of other federal agencies, including the Small Business Administration, during the inter-agency review process. Specifically, when the Department proposes significant regulatory actions, these regulations are initially submitted for review to the Office of Information and Regulatory Affairs (OIRA) pursuant to EO 12866. OIRA facilitates inter-agency dialogue by obtaining feedback from other federal agencies, including the Small Business Administration Office of Advocacy. The Department then has the opportunity to evaluate and respond to other agencies feedback, which often leads to further clarification and refinement.

3. How could your department better consult with state regulators to ensure that regulations do not conflict with or duplicate state requirements?

DOI Response: DOI bureaus regularly work closely with state regulators, both informally and to discharge the agency's outreach responsibilities under the Unfunded Mandates Reform Act and EO 13132 – Federalism. Those affected by both state and Federal regulations also have opportunities to present their views during proposed rule comment periods, during OIRA's EO 12866 review process, and during the normal course of business interactions. While we have not received any specific comments on this issue during our outreach on retrospective review, we would be happy to receive any new information or suggestions and we will continue to seek opportunities to better coordinate with state regulators.

On Defining the Universe of Retrospective Reviews

4. Retrospective reviews are not clearly defined in existing executive orders. For example, Executive Order 13563 merely directs agencies to "facilitate the periodic review of existing significant regulations..." Executive Order 13610 directs agencies to prioritize initiatives that will produce monetary savings, reductions in paperwork, reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. In the absence of a clear directive as to what constitutes a retrospective review as mandated by executive orders, how does your agency define the term?

   DOI Response: It is our view that EOs 13563 and 13610 provide agencies with appropriate discretion to prioritize which rules necessitate retrospective review. As noted in our testimony, not all rules are appropriate for retrospective review, and review for the sake of review may not be the best use of limited resources. At the Department, we seek to identify rules for retrospective review that further our mission. With limited resources, it is important to prioritize the regulations we select for review.

   a. A couple of Interior's retrospective reviews focus on administrative matters streamlining and updating. For example, a project on the "Enterprise Forms System" was cited as an ongoing retrospective review. The proposal was summarized as a "consolidate[ion of] all DOI forms electronically in a way that they can be pre-populated and completed online." Would this be better characterized as a platform update than a retrospective review analysis?

      DOI Response: We would categorize a successful retrospective review effort as any action that reviews and improves an existing requirement to reach a better result for those affected. The Enterprise Forms System is a good example of a retrospective review initiative meeting the requirements set out in EO 13563. As we reported in our most recent report to OIRA, we anticipate savings of approximately 30,000 hours from this initiative. The effort will make the forms more accessible, save time and money, increase consistency, and decrease the potential for human error. We view these results as consistent with the intent of retrospective review.

On Regulatory Flexibility Act Review and other Statutorily-Required Reviews

5. In 2014, in assessing retrospective review processes for Administrative Conference of the United States, Professor Joseph Aldy of Harvard's Kennedy School found that after reviewing 25 rules identified in agency reports on their progress implementing retrospective review, only 14 explicitly referenced retrospective review in the rule-making.[1] He posited that this suggested that some of the rules promulgated under the retrospective review process may have been already in progress, perhaps under existing statutory review authorities. How has your agency made the distinction between reviews in response to Executive Order 13563 and other efforts already underway or responses to new mandates?

   DOI Response: The Department does not draw a distinction between improvements in regulations obtained as a result of a specific retrospective review effort versus improvements gleaned from feedback through the ordinary course of regulatory implementation. In fact, the retrospective review initiative can serve to help the agency focus and sharpen reform efforts even if a reform were already at some stage of development outside of the EO-driven process. The Department utilizes all opportunities to improve regulations for the benefit of the regulated public. We have identified some actions for retrospective review that would have been done in the normal course of our business and routinely seek opportunities to improve our regulations, even without requirements to retrospectively review our regulations.

6. The Regulatory Flexibility Act (RFA) Section 610 requires that rules with a significant economic impact on a substantial number of small entities be reviewed within ten years of promulgation, but in the past the Government Accountability Office (GAO) has found that not all agencies interpret the requirement consistently.[2] In addition, other statutes mandate retrospective review of certain regulations. How have initiatives in response to the President's Executive Order 13563 aligned with other retrospective review initiatives, such as those undertaken under RFA Section 610 or other specific statutory review requirements?

   DOI Response: Whether initiated in conformity with an EO, statutory mandate, or through feedback gleaned from the implementation of a regulation, retrospective review initiatives require the Department to coordinate throughout the Department and across the Federal government, in order to ensure efficient regulatory review and to efficiently manage resources and regulate in a way that is smart, efficient, effective and not more burdensome than necessary to meet our goals.

   a. Please describe the rigor of Section 610 reviews. For example, is cost-benefit analysis typically conducted in the course of these reviews at your agency?

      DOI Response: Generally cost-benefit analysis is conducted at the time the Department is promulgating a rule. If the Department determines a cost benefit

[1] Joseph Aldy for the Administrative Conference of the United States. Learning from Experience: An Assessment of the Retrospective Reviews of Agency Rules and the Evidence for Improving the Design and Implementation of Regulatory Policy 48 (November 17, 2014).
[2] U.S. GOV'T ACCOUNTABILITY OFFICE, REGULATORY FLEXIBILITY ACT: AGENCIES' INTERPRETATIONS OF REVIEW REQUIREMENTS VARY WIDELY, GAO/GGD-99-55, 11 (Apr. 2, 1999)

analysis is necessary, whether through a retrospective review or otherwise, we would conduct the cost-benefit analysis during the process of promulgating the revision.

b. What lessons has the agency learned from conducting additional reviews consistent with other statutory mandates that have facilitated this retrospective review initiative?

DOI Response: We have learned that it is best to prioritize retrospective regulatory reviews on the basis of the potential to achieve significant quantifiable monetary savings or reductions in paperwork burdens, as well as those that reduce unjustified burdens or otherwise simplify requirements imposed on businesses, including small businesses. Some rules may be on the books for many years and do not warrant agency time and resources to conduct a retrospective review. Other rules may require updating more frequently. It makes more sense to focus on revising rules that would most benefit the public and small businesses.

On Quantifying Cost Savings

7. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, GAO found that agencies quantified cost savings in the progress updates for 38 of the 246 completed analyses in their scope, half of which were related to information collection burdens.[3] Why are cost savings not consistently quantified?

DOI Response: Cost savings are not always quantified because data may not be available, data collection must be made consistent with existing resources and not all of the actions have discernible cost savings. Many actions are intended to clarify and simplify regulations to improve compliance, as well as increasing the effectiveness and efficiency of implementation. Cost savings are more likely to be available for information collection burdens because those numbers are available as part of the information collection process.

a. When costs savings were quantified, GAO found that agencies most often attributed those savings to reduced information collection burdens. What other cost savings have resulted from these retrospective reviews?

DOI Response: It is likely that agencies most often attributed savings to reduced information collection burdens because information collection burdens are always quantified. Regulatory actions do not necessarily have quantified impacts, particularly when a rule clarifies language or otherwise improves the effectiveness and efficiency of implementation. Even when impacts are not quantifiable, however, costs and benefits may still be realized.

[3] U.S. GOV'T ACCOUNTABILITY OFFICE, AGENCIES OFTEN MADE REGULATORY CHANGES, BUT COULD STRENGTHEN LINKAGES TO PERFORMANCE GOALS, GAO-14-268 (Apr. 11, 2014)

b. What are the challenges in quantifying the results of these reviews and how could we do better at reporting that progress?

DOI Response: Where a retrospective review action involves a rulemaking, results are quantified in accordance with OMB Circular A-4. Circular A-4 directs agencies to quantify all potential incremental benefits and costs to the extent feasible. For actions that are intended to clarify regulations or otherwise improve implementation, it may only be possible to describe the impacts in qualitative terms.

On Record of Results of Reviews

8. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, GAO found that more than 90 percent of the retrospective review analyses they examined ended in a determination to revise, clarify, or eliminate regulatory text.[4] Would you attribute this success to how your agencies prioritized the regulations you reviewed or simply that a lot of regulations currently on the books are ripe for updates?

DOI Response: The 90 percent figure cited by the April 2014 GAO report can most likely be attributed to the process used by agencies to prioritize regulations for review. DOI, for example, selects rules for regulatory review that we believe may justify the review, such as our recent final rule that revised and updated regulations governing the process for Federal acknowledgement of Indian tribes. Regulations selected for retrospective review should be based upon an agency's judgment, based on public feedback, agency analysis, or other contributing factors, of the best candidates for review. In order to do this DOI relies on four general factors: (1) is the rule obsolete due to changes in the law or practice; (2) is the rule duplicative or incompatible with other rules; (3) has the rule been reviewed in the last 10 years; or (4) is the rule considered overly burdensome or unnecessarily restrictive based upon public or internal comments. We believe that using this filter allows us to better target those rules most in need of review; a complete review of all regulations would be much less efficient.

a. How many of these reviews could be considered low-hanging fruit? Should we expect this level of success going forward?

DOI Response: It is difficult to forecast the percentage of retrospective reviews that would lead to revisions, clarifications or the elimination of text as reported by GAO; however, selecting appropriate candidates for retrospective review increases the chances retrospective review will produce a high rate of alternations of existing regulations.

On Rigor and Scope of Retrospective Review

[4] GAO-14-268

9. In his analysis of retrospective reviews for Mercatus, Mr. Randall Lutter notes, "Very few retrospective analyses of extant federal regulations provide sufficient information to evaluate whether benefits outweighed costs. The overwhelming majority of retrospective analyses that Harrington, the OMB, and Simpson reviewed provide information only about costs, about a key but incomplete measure of benefits... or about both costs and a poor proxy for benefits..."[5] Do your retrospective review analyses attempt to quantify costs, or benefits, or both?

   DOI Response: Our retrospective review analyses quantify both costs and benefits, to the extent they are reasonably and economically obtainable, and in accordance with the procedures in OMB Circular A-4.

   a. Does your office have the capacity to collect data to conduct effective retrospective reviews that include cost-benefit analysis? If not, why not?

      DOI Response: DOI performs an evaluation of costs and benefits as part of the rulemaking process when revising a rule on its retrospective review report. When prioritizing which rules are good candidates for a retrospective review, we have a general sense that the benefits of the revisions will exceed the costs, though the quantifiable impacts may not be determined until the proposed rule is developed.

   b. Would it be beneficial for your agency to have your retrospective review obligations delegated to a specialized office charged with doing just that?

      DOI Response: Executive Orders 13563 and 13610 direct OIRA to coordinate retrospective review among federal agencies. While OIRA currently coordinates regulatory activities under EO 12866, it is important that the office that coordinates retrospective review is centrally involved in the coordination of the Administration's regulatory agenda, rather than an outside organization that may not have sufficient knowledge of the Department's mission and corresponding priorities.

10. In his analysis of retrospective reviews for Mercatus, Mr. Lutter notes, "The focus on retrospective analysis and review of regulations, as opposed to regulatory programs more broadly, may be too narrow." The 2015 OECD Regulatory Policy Outlook stated that "OECD countries could be more strategic and systemic in their evaluation efforts by conducting comprehensive reviews that assess the cumulative impact of laws and regulations in a sector as a whole, with a particular focus on the policy outcomes."[6] Our proposed legislation, S. 1817 The Smarter Regs Act of 2015, directs OMB to encourage and assist agencies to "streamline and coordinate the assessment of major rules with similar or related regulatory objectives" for just this purpose. When contemplating which rules to review, have

[5] Randall Lutter, Working Paper: The Role of Retrospective Analysis and Review in Regulatory Policy, MERCATUS CTR. NO. 12-14 (Apr. 2012).
[6] *OECD Regulatory Policy Outlook 2015* (The Organization for Economic Co-operation and Development, 2015) available at http://www.oecd.org/governance/regulatory-policy/oecd-regulatory-policy-outlook-2015-9789264238770-en.htm.

you ever considered conducting simultaneous reviews on related rules or rules that affect a certain sector of industry?

DOI Response: This past year, we focused on regulations that would promote the trust relationship between Indian tribes and the Federal government. We have been able to make improvements that will benefit Native Americans and tribes, including revising regulations governing the process for Federal acknowledgement of Indian tribes and updating and making less burdensome regulations on obtaining rights-of-way across Indian lands. We are also reviewing regulations for grants to tribally controlled colleges, the Housing Improvement Program, the Indian Child Welfare Act, forestry activity on Indian land, and tribal energy resource agreements.

a. Have you ever considered a large retrospective review on a regulatory framework?

   DOI Response: As noted, over the past year, we have focused our retrospective review efforts on regulations that promote the trust relationship between Indian tribes and the Federal government.

b. What barriers exist to this type of review?

   DOI Response: The Department has directed our limited resources toward prioritizing retrospective review efforts on mission objectives and areas that we expect will achieve the best results. Where warranted, DOI will consider a wholesale review of regulations that impact a particular sector but it is important that the additional time and financial resources will be reasonably expected to lead to substantive improvements of rules that may be outmoded, ineffective, insufficient, or excessively burdensome.

c. How have you worked with interagency partners as you have reviewed existing regulations?

   DOI Response: Many of the actions on the Department's retrospective review report have been deemed by OIRA to be significant under EO 12866. Significant regulatory actions are reviewed by interagency partners as part of OIRA's procedures under EO 12866. We also note that there are several actions on our retrospective review report that are being jointly issued by the Fish and Wildlife Service and National Marine Fisheries Service to improve the implementation of the Endangered Species Act. These actions include regulations on incidental take statements, designating critical habitat, defining "destruction or adverse modification of critical habitat", petitions to list or delist species under ESA, and the process for consultation for projects that are intended to restore habitats when the effect of the project will be beneficial.

11. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*[7], GAO recommended that OIRA work with the agencies to improve how retrospective reviews could be used to inform progress towards agency priority goals under the GPRA Modernization Act of 2010.[8] This included actions such as (1) identifying whether a regulation contributes to an agency priority goal as one criterion for prioritizing reviews, and (2) by including in the scope of retrospective reviews the regulations that collectively contribute to an agency priority goal. What actions has your agency taken to better align retrospective reviews with GPRAMA agency priority goals?

    DOI Response: The Department continues to ensure candidates for retrospective review align with Departmental priorities in order to efficiently manage our resources. For example, our recent final rule revised and updated regulations governing the process for Federal acknowledgement of Indian tribes. This final rule not only promotes a more transparent, timely and consistent process, but furthered the Department's goal of promoting the trust relationship between Indian tribes and the Federal government.

On Planning for Review

12. OMB Memorandum M-11-19 directed agencies to design and write future regulations in ways that facilitate evaluation of their consequences and thus promote retrospective analyses. ACUS recommendation 2014-5 suggested that agencies, when appropriate, establish a framework for reassessing the regulation in the future and should consider including portions of the framework in the rule's preamble. On November 3, 2015, the GW Regulatory Studies Center issued *Learning from Experience: Retrospective Review of Regulations in 2014*[9], which reviewed 22 significant and economically significant rules and found that none of them included a plan to conduct retrospective review of the rule after implementation. How has your agency responded to that OIRA directive and what have you learned through those efforts?

    a. What actions does your agency plan to take to ensure that planning for future reviews is part of the procedures for drafting new regulations?

        DOI Response: We are evaluating appropriate mechanisms to incorporate future evaluations of effectiveness. For example, when the Bureau of Safety and Environmental Enforcement proposed its Well Control rule, the agency asked for public comment on the development of a probabilistic risk assessment methodology that might assist the agency in evaluating the potential effectiveness of any given requirement and asked for comment on how a data collection program to support such

[7] GAO-14-268
[8] GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (Jan. 4, 2011).
[9] Sofie E. Miller, *Learning From Experience: Retrospective Review of Regulations in 2014* (The George Washington University Regulatory Studies Center, Working Paper, 2015), *available at* http://regulatorystudies.columbian.gwu.edu/learning-experience-retrospective-review-regulations-2014.

an assessment could be developed. We are evaluating potential options to incorporate review procedures where appropriate.

13. The Department of Transportation (DOT) maintains a plan on its website to ensure that all regulations are reviewed every ten years. Each DOT agency divides its rules into 10 different groups, and analyzes one group each year. They request public comment on the timing of the reviews through the Regulatory Agenda (for example, if a particular rule should be reviewed earlier and why). Would something like this be viable at your agency?

    DOI Response: Regulations selected for retrospective review should be based upon an agency's judgment, informed by significant outreach, of the best candidates for review. Our approach has been to integrate retrospective review into the culture of DOI and to identify candidates that are most likely to improve the regulatory process and further the mission and policy priorities of DOI. We acknowledge that some current regulations are decades old and have not kept pace with existing practices, and the Department's retrospective review reports have tracked progress in revising several of such regulations. We are continuing to evaluate our process of identifying opportunities for retrospective review, using an approach that is best suited to the structure and diverse missions within the Department.

    a. How do you ensure that cyclical reviews are apparent to your stakeholders to give them an opportunity to comment?

       DOI Response: As noted in our testimony, we are working to foster greater public participation and an open exchange of ideas through the publishing of our Public Engagement Plan in December 2014. We have found that our most effective tool in obtaining feedback from stakeholders is through our direct interactions with stakeholders when conducting regulatory activities. Our bureau staffs work closely with the regulated community and receive frequent feedback on what works or does not work. We also maintain a retrospective review website and an email address that is available at all times for public comment.

Reporting Outcomes of Retrospective Review

14. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, GAO recommended that OIRA work with agencies to improve the reporting of retrospective review outcomes, including providing more comprehensive information about completed reviews.[10] What actions has your agency taken to ensure that retrospective review reporting is more accessible and transparent?

    DOI Response: We have published Federal Register notices asking for public comment, our retrospective review plan and reports are available to the public, we maintain a website

[10] GAO-14-268

devoted to retrospective review, and we maintain an email address (regsreview@ios.doi.gov) that the public may use anytime to comment.

Senator Heitkamp

1. A critical component of retrospective review is ensuring that the public has the opportunity to provide feedback on whether regulations are in fact achieving their intended objective. However, all too often we hear from the general public, small business, and other regulated entities, that they feel disconnected from the rulemaking process, or that their voices are not being heard.

    a. Could each of you address how your agencies engage the public and seek feedback outside of the general notices published in the Federal Register?

    DOI Response: The Department continues to work towards our goal of increasing public interest and engagement in the process of improving our regulations. As noted in our testimony, we are working to foster greater public participation and an open exchange of ideas through the publishing of our Public Engagement Plan in December 2014. We have found that our most effective tool in obtaining feedback from stakeholders is through our direct interactions with stakeholders when conducting regulatory activities. Our bureau staffs work closely with the regulated community and receive frequent feedback on what works or does not work. Specifically, as it applies to Indian tribes, our commitment to formal consultation has proven to be a very effective tool. We also maintain a retrospective review website and an email address that is available at all times for public comment.

    b. Do you find that the Federal Register is still the most effective means of providing notice and receiving useful feedback to help identify public concerns?

    DOI Response: Although we find the Federal Register to be a necessary, useful and central location to provide the public with notice of agency rules and activities, and provides the key tool where anyone, not just particular, well-positioned stakeholders, can interact with the rulemaking process, generally the feedback we receive from our direct interactions with small businesses, tribes, and other stakeholders as we work with them in implementing regulations is at least as important, and often provides more direct suggestions for improvement.

2. When examining retrospective review, we often discuss cost benefit analysis to determine whether or not a rule is achieving its stated objective. However, part of this information collection requires the solicitation of data from regulated entities.

a. Do you find that current retrospective reviews are stymied by the strict requirements of the Paperwork Reduction Act?

DOI Response: We apply cost-benefit analysis to rules under development, consistent with the procedures in OMB Circular A-4. It is typically not necessary to conduct a detailed analysis of a regulation in order to reach a general conclusion that the benefits of revising it would exceed the costs. The Paperwork Reduction Act (PRA) typically is not a limiting factor in collecting general information from the public, as is often done through notifications in the Federal Register or other types of more-focused outreach. To the extent the PRA applies to more targeted collections of information, it is important that any data collected from regulated entities as part of a retrospective review has practical utility and comports with other parameters set forth in the PRA and its implementing regulations.

b. Would we see an increased effectiveness of the retrospective review process if we were to exempt retrospective review activities from the Paperwork Reduction Act?

DOI Response: We obtain most input for retrospective review from our regular interaction with those who are affected by our regulations. We have also published Federal Register notices requesting comment on retrospective review. These efforts have not triggered the requirements of the Paperwork Reduction Act. Any subsequent revision of rules would be conducted consistent with all applicable laws, regulations, and Executive Orders.

3. During our subcommittee's maiden hearing, we invited witness from diverse backgrounds to discuss the Federal government's regulatory framework. I took the opportunity to discuss retrospective review with that panel as well. One thing I heard from both witnesses was that there needs to be a dedicated funding stream in support of retrospective review activities.

a. Based on current expectations of the President, as outlined in Executive Order 13563, are resources being dedicated to retrospective review at the detriment of the mission objectives of the agency?

DOI Response: DOI has focused its retrospective review efforts on Departmental priorities to make the best use of our limited resources.

b. What resources do your agencies need to effectively and efficiently carry out retrospective review while maintaining overall operational awareness?

DOI Response: DOI has tried to be as effective and efficient as possible in doing retrospective review, as we believe it is part of our mission. We will continue to do this and appreciate the subcommittee's recognition that this is important.

4. In a previous hearing, Mr. Neil Eisner, a Senior Fellow at the Administrative Conference of the United States, advocated strengthening the culture of review within the Federal agencies. In his opinion there is a focus, especially among senior officials, on creating something new rather than fixing something old.

   a. What actions are taken within each of your agencies to ensure that the workforce buys into the reality that ensuring the effectiveness of existing regulations is just as important as ensuring new rulemaking is of the highest caliber?

   DOI Response: Through our Plan for Retrospective Regulatory Review, we have conveyed across the Department the importance of EO 13563, which calls for "periodic review of existing regulations". As noted in our testimony, the Department has made retrospective review an explicit and permanent part of our planning process. Each Department bureau and office is asked to identify at least one regulation for review each year. In considering regulations for review, we ask them to consider if a rule (1) is obsolete due to changes in the law or practice; (2) is duplicative or incompatible with other rules; (3) has been reviewed in the last 10 years; or (4) is considered burdensome or unnecessarily restrictive based upon public or internal comments. In addition, significant effort is focused on ensuring the effectiveness of existing regulations. The vast majority of rulemaking efforts at DOI generally involve amending existing regulations. Our most valuable input is from small businesses, tribes, and others who tell us what is or isn't working with our existing regulations.

5. Understanding that good retrospective review often require examination of highly technical subject matter, it is important that agencies have a highly skilled and specialized work force to conduct retrospective reviews in an effective manner.

   a. Having completed a number of retrospective reviews up to this point, what are some the challenges you have found as it relate to workforce, in completing retrospective review effectively?

DOI Response: The greatest challenge is in making the best use of our employee resources. The employees who conduct retrospective review are also responsible for other program duties and for developing other regulations that are also critical to mission goals.

b. Do you think the Federal Governments could do more to able to attract [sic]

DOI Response: We seek the most highly skilled and specialized employees that we can hire. These employees develop new regulations and are also responsible for conducting retrospective review of existing regulations. We seek to maximize their effectiveness by prioritizing retrospective review efforts on mission objectives and areas that we expect will achieve the best results.

c. Do you have dedicated staff focused on reviewing existing rules?

DOI Response: No. The DOI staff that does retrospective review is the same staff that develops new regulations that also support our mission. They also have other responsibilities related to their program and area of expertise.

Post-Hearing Questions for the Record
Submitted to Mr. Christopher Zehren
From Senator James Lankford

"Agency Progress in Retrospective Review of Existing Regulations"
November 5, 2015

On Reviewed Regulations

Question:

1. In May, USDA's Rural Housing Service proposed aligning application requirements for community facilities grants with the lending industry. As a result, the agency estimates that approximately 90 applicants each year (such as towns, non-profits, and federally-recognized tribes) will not be required to provide an "examination opinion", which costs an average of $45,000. This change will save the public approximately $4 million a year. While I applaud this effort, why was this not implemented earlier?

Answer:

Appropriate changes were implemented after input from stakeholders was received and analysis on how to implement the improved services was completed.

Question:

2. USDA completed the direct certification process, which allows local education agencies to get a child's SNAP documentation from the State or local program office, so low-income families don't have to submit a separate paper application. This eliminated an estimated 113,000 hours of paperwork. Why wasn't this done earlier?

Answer:

Appropriate changes were implemented after input from stakeholders was received and analysis on how to implement the improved services was completed. The law requiring the change imposed a mandatory phase-in period of three years beginning in School Year 2006–2007.

On Consulting with the Small Business Community and State Regulators

Question:

3. How could your department better leverage the insights and resources of the Small Business Administration's (SBA) Office of Advocacy?

Answer:

Like other Federal agencies, the Office of Advocacy has an opportunity to provide input on USDA's draft regulations through the interagency regulatory review process administered by the Office of Information and Regulatory Affairs. Any comments received through this process are addressed prior to taking final action. USDA agencies have also been active participants in regulatory roundtables sponsored by the Office of Advocacy. These roundtables provide a forum for small businesses to be heard and provide input on regulatory strategies and program operations of greatest interest to them. In 2014, former SBA Administrator Karen Mills and Secretary Vilsack signed a Memorandum of Understanding to better serve rural small businesses. This close working relationship allows our agencies to make Federal financial resources more accessible and to increase access to private investment capital for small rural businesses.

Question:

4. In your testimony, you mentioned that USDA has the opportunity to give input to Congress as the Farm Bill is periodically reauthorized to improve the way that your programs are implemented. Please describe USDA's process to gather feedback from stakeholders after new regulations are promulgated to inform subsequent reauthorizations.

Answer:

USDA has a variety of mechanisms to stay connected with our stakeholders. We find that no one method of contact works across the diverse network of USDA programs and stakeholder groups. As a result, USDA employs a wide range of means of staying in touch with our stakeholders, including: over 160 Federal Advisory Committees and Advisory Boards, like the National Advisory Committee on Meat and Poultry Inspection, National Advisory Council on Maternal, Infant, and Fetal Nutrition, and the Advisory Committee on Biotechnology and 21st Century Agriculture; joint USDA and private sector boards, like the Federal Crop Insurance Board of Directors; Requests for Information and Advance Notices of Proposed Rulemakings published in the Federal Register; stakeholder meetings and roundtables; consultations with Tribal governments; participation in annual and ad hoc stakeholder events and meetings; and informal conversations between USDA field staff and individual stakeholders.

a) Please provide an example of such feedback being relayed and implemented in the latest Farm Bill reauthorization.

Answer:

In preparation for a Farm Bill, USDA agencies review what has been learned during its communications with stakeholders. This input is considered as USDA develops issues and analysis used in working with Congress on the development of a Farm Bill. The input from

stakeholders is not just to USDA, but directly to the appropriate members of Congress deliberating on and passing authorization for USDA programs. Based on this input, the most recent Farm Bill resulted in several major changes, including, but not limited to, the elimination of direct payments, creation of the regional conservation partnership program to target resources where they are needed most, strengthening conservation compliance, and streamlining rural business programs.

Question:

5. How could your department better liaise with state regulators to ensure that regulations do not conflict with or duplicate state requirements?

Answer:

USDA's regulatory agencies have memoranda of understanding (MOUs) with relevant state agencies that delineate how the federal and state authorities will cooperate and interact. MOUs typically address coordination where each party accounts for their own regulatory authority to ensure regulations do not conflict or are duplicative. The agreements typically include processes to share information to ensure effective enforcement and program administration. In addition, USDA's Office of External and Intergovernmental Affairs (OEIA) serves as the liaison to elected and appointed officials of State, county, local, and Tribal governments and other stakeholders. OEIA maintains a close working relationship with the National Association of States Departments of Agriculture (NASDA) and meets with NASDA regularly to receive input on issues of importance to them. The Office of Tribal Relations (OTR) serves as a single point of contact for Tribal issues and works to ensure that relevant programs and policies are efficient, easy to understand, accessible, and developed in consultation with the American Indians and Alaska Native constituents they impact.

On Defining the Universe of Retrospective Reviews

Question:

6. Retrospective reviews are not clearly defined in existing executive orders. For example, Executive Order 13563 merely directs agencies to "facilitate the periodic review of existing significant regulations..." Executive Order 13610 directs agencies to prioritize initiatives that will produce monetary savings, reductions in paperwork, reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. In the absence of a clear directive as to what constitutes a retrospective review as mandated by executive orders, how does your agency define the term?

Answer:

The Department has not defined the term retrospective review, but rather has adhered to the language in the Executive Orders. Executive Order 13563 directs agencies to "modify, streamline, expand, or repeal" rules determined to be "outmoded, ineffective, insufficient, or excessively burdensome." Executive Order 13610 directs agencies to give priority to "those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens."

On Regulatory Flexibility Act Review and other Statutorily-Required Reviews

Question:

7. In 2014, in assessing retrospective review processes for Administrative Conference of the United States, Professor Joseph Aldy of Harvard's Kennedy School found that after reviewing 25 rules identified in agency reports on their progress implementing retrospective review, only 14 explicitly referenced retrospective review in the rule-making.[1] He posited that this suggested that some of the rules promulgated under the retrospective review process may have been already in progress, perhaps under existing statutory review authorities. How has your agency made the distinction between reviews in response to Executive Order 13563 and other efforts already underway or responses to new mandates?

Answer:

USDA does not distinguish the initiatives identified in its retrospective review status updates from other regulatory efforts prompted by legislative reauthorizations, Section 610 reviews, or other legislative requirements for reviewing regulatory and paperwork burdens.

Question:

8. The Regulatory Flexibility Act (RFA) Section 610 requires that rules with a significant economic impact on a substantial number of small entities be reviewed within ten years of promulgation, but in the past the Government Accountability Office (GAO) has found that not all agencies interpret the requirement consistently.[2] In addition, other statutes mandate retrospective review of certain regulations. How have initiatives in response to the President's Executive Order 13563 aligned with other retrospective review initiatives, such as those undertaken under RFA Section 610 or other specific statutory review requirements?

Answer:

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[1] Joseph Aldy for the Administrative Conference of the United States. Learning from Experience: An Assessment of the Retrospective Reviews of Agency Rules and the Evidence for Improving the Design and Implementation of Regulatory Policy 48 (November 17, 2014).

[2] U.S. GOV'T ACCOUNTABILITY OFFICE, REGULATORY FLEXIBILITY ACT: AGENCIE'S INTERPRETATIONS OF REVIEW REQUIREMENTS VARY WIDELY, GAO/GGD-99-55, 11 (Apr. 2, 1999)

USDA routinely aligns efforts to simplify regulations and reduce the reporting burdens on the public under Executive Orders 13563 and 13610, as well as actions required by legislative reauthorizations. USDA establishes regulatory priorities twice each year to coincide with the development of the Unified Regulatory Agenda. These actions have been a critical element of USDA's strategy to better serve our customers and have complemented efforts to streamline administrative processes and optimize program efficiency.

Question:

a) Please describe the rigor of Section 610 reviews. For example, is cost-benefit analysis typically conducted in the course of these reviews at your agency?

Answer:

Reviews conducted pursuant to section 610 of the Regulatory Flexibility Act (RFA) do not require a formal cost benefit analysis. Section 610 specifies several criteria that agencies follow to identify and evaluate the need for revisions of regulations. Should the Section 610 review identify the need for a rulemaking, agencies will conduct a cost-benefit analysis to support the rulemaking.

Question:

b) What lessons has the agency learned from conducting additional reviews consistent with other statutory mandates that have facilitated this retrospective review initiative?

Answer:

USDA has learned that it needs to continuously review and update regulations to ensure they are most effective, least burdensome, and meeting the needs of stakeholders. We accomplish this through ongoing, routine engagement with stakeholders and activities related to the periodic reauthorization of legislative authorities. We also must ensure that our limited staff and resources are targeted to initiatives that will achieve the greatest improvement in program performance.

On Quantifying Cost Savings

Question:

9. In the April 2014 GAO report Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals, GAO found that agencies quantified cost savings in the progress updates for 38 of the 246 completed analyses in their

scope, half of which were related to information collection burdens.[3] Why are cost savings not consistently quantified?

Answer:

USDA uses the best available data and information to calculate cost savings. Cost savings are not quantified when a burden reduction initiative results in a program efficiency that allows the agency to reallocate resources to programmatic activities that improve customer service or break down barriers to participation, when the initiative is a government-wide effort for management reform, or when the agency is engaged in an ongoing effort whose outcome is not yet measurable. Initiatives that require rulemaking will meet the analytical requirements of Executive Order 12866, which include a cost-benefit analysis for significant or economically significant rules. Agencies will make every effort to quantify the impact of these actions, but may not be able to if data is not reasonably available or if the anticipated outcome is not measureable. When quantification of a particular benefit or cost is not possible, the agency will select the alternative that maximizes net benefits, while also taking into consideration qualitative benefits and costs.

Question:

a) When costs savings were quantified, GAO found that agencies most often attributed those savings to reduced information collection burdens. What other cost savings have resulted from these retrospective reviews?

Answer:

USDA's retrospective review initiatives have resulted in a variety of program reforms, including program efficiencies that allow the agency to allocate resources to higher priority programmatic activities, clarification of program requirements that breakdown barriers to participation and streamline administrative review, and public and health cost savings due to the avoidance or mitigation of foodborne illness risk. For example, the Food Safety and Inspection Service published a final rule reflected in the USDA retrospective review plan that modernized the approach to poultry slaughter inspection. The peer-reviewed risk assessment estimates that this new approach to inspection will prevent approximately 5,000 foodborne illnesses each year. The cost-benefit analysis estimates a benefit of approximately $16.8 million per year in the second year of implementation due to programmatic savings of $10 million and health benefits of $6.8 million, with higher savings in the out-years.

[3] U.S. GOV'T ACCOUNTABILITY OFFICE, AGENCIES OFTEN MADE REGULATORY CHANGES, BUT COULD STRENGTHEN LINKAGES TO PERFORMANCE GOALS, GAO-14-268 (Apr. 11, 2014)

Question:

b) What are the challenges in quantifying the results of these reviews and how could we do better at reporting that progress?

Answer:

The difficulties agencies encounter when conducting retrospective analysis are not unique, have been well documented, and are not dissimilar to factors that hinder prospective analysis. A significant barrier is access to data necessary to evaluate the overall impact of a regulatory action. For instance, while agencies have access to administrative and economic data useful for estimating the costs coming into compliance, estimating the benefits attributed to those actions can be complex and require data not readily available. Difficulties also arise when examining empirical data and separating the effect of the regulation from other factors. One obstacle is that the Paperwork Reduction Act requires agencies to confine data requests from regulated entities and program participants to information needed to effectively administer the program and ensure program integrity. These requirements make it difficult to acquire data solely for analytical purposes. While agencies employ a number of methods to facilitate the acquisition of data and improve analyses, these efforts need to minimize the burden placed on firms and individuals and must be done within constrained resources.

USDA regularly posts status reports on its retrospective review efforts for review by the public through the OIRA website (https://www.whitehouse.gov/omb/oira/regulation-reform) and the USDA website (http://www.usda.gov/wps/portal/usda/usdahome?navid=USDA_OPEN). In addition, USDA provides a link to its status reports in the annual Statement of Regulatory Priorities released by OMB in the fall. Further, the USDA request for information seeking public input on the USDA's retrospective review efforts highlights USDA's key accomplishments and ongoing activities pursuant to its efforts to reduce regulatory burdens. A centralized location for posting these reports makes it easier for the public to keep up-to-date with USDA's progress.

On Record of Results of Reviews

Question:

10. In the April 2014 GAO report Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals, GAO found that more than 90 percent of the retrospective review analyses they examined ended in a determination to revise, clarify, or eliminate regulatory text.[4] Would you attribute this success to how your agencies prioritized the regulations you reviewed or simply that a lot of regulations currently on the books are ripe for updates?

Answer:

To ensure the highest priority needs are met, USDA conducts a top-to-bottom regulatory review twice each year as part of the development of the unified regulatory agenda. As part of this review, agencies identify specific topics, regulations, and paperwork collections that are outmoded, ineffective, or excessively burdensome, particularly those identified in comments received in response to the USDA retrospective review plan. Agencies are also directed to review economically significant rules issued over the last 10 years and the most burdensome paperwork collections to identify potential areas of reform. Agency submissions are evaluated and a set of regulatory priorities is established based on the following criteria: Urgency for improving customer service by means of simplification, streamlining, or improved quality of information collection procedures; comments from stakeholders; resource capacity and potential approval process timeline; and likelihood of statutory change. Both the 2014 Farm Bill and Healthy, Hunger-Free Kids Act of 2010 introduced numerous program reforms that eliminated obsolete and underperforming provisions, simplified the administration of programs, and improved program outcomes, while generating significant budgetary savings. While not formal retrospective reviews, implementing these periodic reauthorizations work in concert with our regulatory review efforts.

Question:

a) How many of these reviews could be considered low-hanging fruit? Should we expect this level of success going forward?

Answer:

USDA's approach to retrospective review is based on senior level commitment and broad agency engagement; a robust, ongoing dialogue with stakeholders; and a results-oriented approach. This is reflected in USDA's Regulatory Agenda and Statement of Regulatory Priorities, which reflect a significant effort by agencies to advance the Department's successful record on improving

[4] GAO-14-268

regulations. The process of continuously reviewing and updating regulations to address improvements in technology, emerging threats, and other changes, allows USDA to implement significant regulatory reforms and achieve administrative efficiencies that result in improved customer service and program performance. Further, the periodic reauthorization of many of USDA's statutes has paved the way for program reforms that are consistent with the goals of the Executive Order 13563.

On Rigor and Scope of Retrospective Review

Question:

11. In his analysis of retrospective reviews for Mercatus, Mr. Randall Lutter notes, "Very few retrospective analyses of extant federal regulations provide sufficient information to evaluate whether benefits outweighed costs. The overwhelming majority of retrospective analyses that Harrington, the OMB, and Simpson reviewed provide information only about costs, about a key but incomplete measure of benefits... or about both costs and a poor proxy for benefits..."[5] Do your retrospective review analyses attempt to quantify costs, or benefits, or both?

Answer:

As indicated in USDA's periodic status reports, USDA initiated 22 priority initiatives, 9 of which have been completed. These initiatives have reduced regulatory burden by over 475,000 hours. For actions resulting in rulemaking, agencies have estimated the benefits as part of the cost-benefit analyses conducted in support of the rulemaking. Agencies make every effort to quantify costs and benefits to the extent that data is reasonably available to measure them and quantification of a particular benefit or cost is possible.

Question:

a) Does your office have the capacity to collect data to conduct effective retrospective reviews that include cost-benefit analysis? If not, why not?

Answer:

In recent years, USDA has experienced a reduction in its regulatory capacity due to constrained budgets. To address this, USDA has implemented a top-to-bottom regulatory review to ensure that agency resources are targeted to those initiatives that will achieve the greatest improvement in performance. We have also aligned the regulatory review efforts with actions taken to implement periodic reauthorization of legislative authorities. Improved information technology and data sharing with other Federal agencies has provided USDA greater access to data

[5] Randall Lutter, Working Paper: The Role of Retrospective Analysis and Review in Regulatory Policy, MERCATUS CTR. NO. 12-14 (Apr. 2012).

important to conducting effective retrospective review. Overall, these efforts have allowed agencies to effectively balance the need for retrospective review with implementing legislative authorities and the need for effective operation of a program on a day-to- day basis.

Question:

b) Would it be beneficial for your agency to have your retrospective review obligations delegated to a specialized office charged with doing just that?

Answer:

Creating a special office charged with ensuring that USDA is meeting its obligations under Executive Order 13563 would be duplicative of actions agencies already are taking to coordinate regulatory review with stakeholders. Agencies actively solicit public input on their regulatory strategies and retrospective review plans through routine stakeholder interactions. In addition advisory committees, industry boards, consumer organizations, and other professional panels play a significant role ensuring USDA's regulations and other program requirements are the most effective. Agencies also use Tribal consultation to provide information and receive direct input from the Native Americans on regulatory actions. Because USDA staff are geographically dispersed and have constant, one-on-one interactions with the public, customers are able to provide USDA employees immediate feedback on agency operations. In addition, periodic changes in legislative authority creates an ongoing opportunity for our stakeholders and Congress to directly weigh in on many of the major programs administered by the Department and to provide feedback on regulations in place to implement the programs being reauthorized.

Question:

12. In his analysis of retrospective reviews for Mercatus, Mr. Lutter notes, "The focus on retrospective analysis and review of regulations, as opposed to regulatory programs more broadly, may be too narrow." The 2015 OECD Regulatory Policy Outlook stated that "OECD countries could be more strategic and systemic in their evaluation efforts by conducting comprehensive reviews that assess the cumulative impact of laws and regulations in a sector as a whole, with a particular focus on the policy outcomes."[6] Our proposed legislation, S. 1817 The Smarter Regs Act of 2015, directs OMB, to encourage and assist agencies to "streamline and coordinate the assessment of major rules with similar or related regulatory objectives" for just this purpose. When contemplating which rules to review, have you ever considered conducting simultaneous reviews on related rules or rules that affect a certain sector of industry?

[6] *OECD Regulatory Policy Outlook 2015* (The Organization for Economic Co-operation and Development, 2015) available at http://www.oecd.org/governance/regulatory-policy/oecd-regulatory-policy-outlook-2015-9789264238770-en.htm.

Answer:

USDA's Food Safety and Inspection Service (FSIS) undertook a sector-wide re-evaluation of the poultry slaughter inspection system. On January 27, 2012, FSIS published a proposed rule to modernize poultry slaughter inspection ("*Modernization of Poultry Slaughter Inspection,*" 77 FR 13512). This rule, finalized in August 2014, amended the poultry products inspection regulations to establish the New Poultry Inspection System (NPIS). FSIS coordinated extensively with the National Institute for Occupational Safety and Health, and the Occupational Safety and Health Administration to address worker safety and health issues associated with the rule. NPIS allows establishments more control over their production process, and removes unnecessary regulatory obstacles to innovation while improving the effectiveness of poultry slaughter inspection and overall food safety.

Question:

a) Have you ever considered a large retrospective review on a regulatory framework?

Answer:

USDA routinely analyzes the effectiveness of its regulations and has undertaken the following regulatory actions that make significant changes to its regulations:

- In 2010, the Risk Management Agency eliminated hundreds of pages of regulations and significantly reduced the paperwork burden on hundreds of thousands of small businesses, including producers, insurance agents, and loss adjusters.
- In April 2011, the Food Safety and Inspection Service (FSIS) implemented the Voluntary Cooperative Interstate Shipment Program that provided state-inspected establishments the option to ship meat and poultry products across state lines. This is the first significant change in the state inspection program since it was implemented decades ago. By participating in this voluntary program, smaller state-inspected establishments are able to access larger markets.
- In June 2011, the Food and Nutrition Service (FNS) published a final rule that modified provisions of two interim rules to improve program integrity and simplify program requirements for the Child and Adult Care Food Program. These changes reflected the experience of State agencies and the Department in implementing the two interim rules over several years. FNS conducted an extensive data collection and analysis under the Child Care Assessment Project that evaluated implementation of the rules by family day care home sponsors and providers.
- In January 2012, FSIS issued a proposed rule that it finalized in July 2014 that moved away from a system devised and designed as far back as 1957, when individual inspectors focused

on issues involving quality assurance and not so much on food safety. By publishing this rule, FSIS now has the ability to place trained inspectors where they can better ensure food is being processed safely. These improvements made use of sound science to modernize food safety procedures and prevent thousands of illnesses each year.

- In March 2012, the Animal and Plant Health Inspection Service (APHIS) published a proposed rule to complete efforts to modernize its import regulations for bovine spongiform encephalopathy (BSE). When the final rule published in November 2013, the United States demonstrated to the international community its commitment to base BSE regulations on internationally accepted scientific literature and standards set by the World Organization for Animal Health (OIE). The final regulation allowed for the safe trade of cattle and cattle products valued in the billions of dollars, while protecting producers and consumers in the United States from the introduction of BSE.

- In April 2012, the Forest Service published a planning rule which updated a planning process the agency had used since 1982. The Forest Service carefully considered over 250,000 comments received on the proposed rule and draft environmental impact statement. This careful consideration exemplified the collaborative effort that drove this rulemaking. The new rule placed increased emphasis on providing opportunities for public participation in the planning process.

- In March 2014, FNS issued a final rule revising food packages for the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). This rule completed implementation of the first comprehensive revisions to the WIC food packages since 1980. The revisions were designed to improve the nutrition and health of the nation's low-income pregnant women, new mothers, infants and young children by providing more healthy choices to meet their needs during critical periods of growth and development. The modifications in the final rule reflect the experiences of WIC State agencies in implementing an interim rule, while continuing to fulfill the intent of the recommendations of the Institute of Medicine (IOM) of the National Academies that serve as the basis for the WIC food package changes.

- After publishing a proposed rule in April 2014, APHIS published a final rule in October 2015 that changed the way it calculates fees to recoup the costs of conducting agricultural quarantine inspections (AQI) at U.S. ports of entry. The adjustments are the first changes to AQI user fees in nearly a decade and will ensure that the AQI program will have the financial stability it needs to continue the critical work of keeping U.S. agriculture safe and productive. The revised AQI fee structure ensures that no one party pays more than the costs of the services they incur. APHIS worked with an independent accounting firm to review the AQI fee structure and carefully considered a number of alternatives for revising the user fees.

- In June 2015, FSIS published an affirmation of an interim rule culminating a 10-year effort to encourage firms to take meaningful steps to further reduce the incidence of *Listeria monocytogenes* (Lm) in Ready-to-Eat Meat and Poultry Products. The final rule adopted an innovative approach that provides the industry a set of alternatives that provide them flexibility in how they achieve improved food safety performance without relying on narrowly prescriptive command and control policies. In return, FSIS advised firms that it would conduct more testing at establishments if their Lm control measures provide less potential risk reduction than other available control measures. As an incentive, firms were encouraged to make food safety enhancement claims on their RTE product labels that describe the processes used to eliminate or reduce Lm, or suppress its growth in products. This option gives companies an opportunity to inform consumers about the extra steps companies have taken to enhance the safety of their products. FSIS made minor changes to regulatory provisions in response to comments that the Agency received and on the basis of experience in implementing the interim final rule, rigorous evaluation, and feedback received during outreach and training sessions.

Question:

b) What barriers exist to this type of review?

Answer:

Conducting these types of reviews requires a high level of pre-planning and stakeholder involvement, extensive coordination with Federal and state partners, and the updating of information technology and other administrative systems. Most reforms are adopted through a process that entails a significant level of public participation, and thus requires a significant amount of time to complete. Agencies must also take into consideration agency resources and competing priorities. Although reviews will evaluate feasible options, they must operate within the scope and limits of their legislative authority.

Question:

c) How have you worked with interagency partners as you have reviewed existing regulations?

Answer:

Rules are developed through an interagency regulatory review process administered by the Office of Information and Regulatory Affairs. The interagency regulatory review process provides an agency an opportunity to review another agency's rule of interest. OMB works to develop consensus, while balancing priorities of the Administration and reducing duplication.

Question:

13. In the April 2014 GAO report Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals[7], GAO recommended that OIRA work with the agencies to improve how retrospective reviews could be used to inform progress towards agency priority goals under the GPRA Modernization Act of 2010.[8] This included actions such as (1) identifying whether a regulation contributes to an agency priority goal as one criterion for prioritizing reviews, and (2) by including in the scope of retrospective reviews the regulations that collectively contribute to an agency priority goal. What actions has your agency taken to better align retrospective reviews with GPRAMA agency priority goals?

Answer:

USDA identified three short-term Agency Priority Goals (APG) for fiscal years (FYs) 2014 and 2015 within the GPRAMA framework. These APGs aligned with USDA regulatory review efforts in the following ways:

- To support the APG on rural prosperity, the Rural Business Service (RBS) published the final rule for the Rural Energy for America Program (REAP) that resulted in a 20 percent reduction in the number of hours need to complete technical reports for applications with total project costs between $80,000 to $200,000; the elimination of reports for projects lower than $80,000; and a 50 percent reduction in the number of hours it takes to complete the narrative portion of the application.

- To support the soil conservation APG, the Natural Resources Conservation Service (NRCS) implemented the Conservation Delivery Streamlining Initiative (CDSI) – Client Gateway (CG). When fully implemented the initiative will allow NRCS field staff to spend more time on conservation planning in the field with customers, reduce the time needed to implement cost-share contracts, and provide more flexibility for customers. NRCS estimates the cumulative time savings may be as high as 110,000 hours resulting from reduced travel time by clients to NRCS offices.

- To support the food safety APG, FSIS implemented the Modernization of Poultry Slaughter Inspection rule. This rule modernized young chicken and turkey slaughter inspection in the United States by focusing FSIS inspection resources on the areas of the poultry production system that pose the greatest risk to food safety. The final rule reduces costs by making better use of Agency inspection resources and improving the effectiveness of inspection systems and will result in a reduction of foodborne illness.

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[7] GAO-14-268

[8] GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (Jan. 4, 2011).

On Planning for Review

Question:

14. OMB Memorandum M-11-19 directed agencies to design and write future regulations in ways that facilitate evaluation of their consequences and thus promote retrospective analyses. ACUS recommendation 2014-5 suggested that agencies, when appropriate, establish a framework for reassessing the regulation in the future and should consider including portions of the framework in the rule's preamble. On November 3, 2015, the GW Regulatory Studies Center issued Learning from Experience: Retrospective Review of Regulations in 2014[9], which reviewed 22 significant and economically significant rules and found that none of them included a plan to conduct retrospective review of the rule after implementation. How has your agency responded to that OIRA directive and what have you learned through those efforts?

Answer:

USDA established criteria for identifying and selecting initiatives for retrospective review. One of those criteria is the likelihood of Congressional action. The Department has found that reauthorizations provide an ongoing opportunity for our stakeholders and Congress to directly weigh in on many of the major programs administered by the Department and to provide feedback on regulations in place. For example, many of the provisions in the 2014 Farm Bill expire in 2018 and will be subject to continued Congressional oversight during the development of the next farm bill.

In addition, agency regulations routinely request that the public provide comments for how the agencies can develop regulations that are more effective and less burdensome on the public, including the submission of data that can be used to evaluate the costs and benefits of regulations. Agencies are also collecting program information useful for retrospective review outside of the regulatory process. For example, rural development and international food assistance programs collect program metrics through the application process that can be used to evaluate how well programs are achieving their goals. Inspection programs have access to compliance data and other program data that is used to evaluate the impact of regulations. The Food and Nutrition Service routinely conducts studies assessing the impact of nutrition assistance programs on addressing food insecurity. USDA has also made significant investments in information technology to collect program data that will support retrospective review, such as the Conservation Effects Assessment Project for the Natural Resources Conservation Service and the Public Health Information System for the Food Safety and Inspection Service.

[9] Sofie E. Miller, *Learning From Experience: Retrospective Review of Regulations in 2014* (The George Washington University Regulatory Studies Center, Working Paper, 2015), *available at* http://regulatorystudies.columbian.gwu.edu/learning-experience-retrospective-review-regulations-2014.

Question:

a) What actions does your agency plan to take to ensure that planning for future reviews is part of the procedures for drafting new regulations?

Answer:

USDA will continue to conduct a top-to-bottom regulatory review twice each year as part of the development of the unified regulatory agenda. During this review, agencies will identify specific activities, regulations, and paperwork collections that are outmoded, ineffective, or excessively burdensome, particularly those identified in comments received in response to the USDA retrospective review plan. Agencies will continue to review economically significant rules issued over the last 10 years and the most burdensome paperwork collections to identify potential areas of reform. Significant and economically significant regulations will continue to undergo rigorous review within the Department and by the Office of Management and Budget.

Question:

15. The Department of Transportation (DOT) maintains a plan on its website to ensure that all regulations are reviewed every ten years. Each DOT agency divides its rules into 10 different groups, and analyzes one group each year. They request public comment on the timing of the reviews through the Regulatory Agenda (for example, if a particular rule should be reviewed earlier and why). Would something like this be viable at your agency?

Answer:

USDA agencies review existing regulations on an ongoing basis. If regulations are found to need revision, agencies initiate rulemaking actions taking into account agency priorities and resources. USDA's review of existing regulations follow requirements of Section 610 of the Regulatory Flexibility Act, whereby rules that may have a substantial impact on small entities were reviewed within 10 years of publication of the final rule. These reviews are identified in the Unified Regulatory Agenda published twice each year and are identified in agency websites. USDA also publishes a Request for Information from the public at the time the regulatory agenda is published that identifies USDA's regulatory review efforts and requests the public to submit recommendations for retrospective review. Moreover, the periodic reauthorization of Farm Bill and the child nutrition programs, roughly every five years, provides an ongoing opportunity for our stakeholders and Congress to directly weigh in on the programs administered by the Department, as well as the implementing regulations.

Question:

a) How do you ensure that cyclical reviews are apparent to your stakeholders to give them an opportunity to comment?

Answer:

On an a periodic basis, the Office of Management and Budget and USDA post progress reports on their respective websites for the public to review. The Unified Regulatory Agenda identifies USDA regulatory actions supporting the Department's retrospective review efforts and upcoming section 610 reviews. In addition, USDA highlights and lists retrospective review efforts in the annual Statement of Regulatory Priorities released by OMB in the fall. Since the release of the USDA retrospective review plan, USDA has continued to publish a Federal Register notice requesting public comment on its retrospective review efforts following the release of the Regulatory Agenda. This is supplemented by agency officials highlighting agency plans in routine meetings with stakeholders and encouraging their involvement and comments. Additionally, as part of an agency's process for conducting section 610 reviews, they publish a Federal Register notice inviting the public to submit written comments on the existing regulation under review.

Reporting Outcomes of Retrospective Review

Question:

16. In the April 2014 GAO report Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals, GAO recommended that OIRA work with agencies to improve the reporting of retrospective review outcomes, including providing more comprehensive information about completed reviews.[10] What actions has your agency taken to ensure that retrospective review reporting is more accessible and transparent?

Answer:

USDA reports on the status of its retrospective review are available to the public through the Office of Information and Regulatory Affairs (OIRA) website (https://www.whitehouse.gov/omb/oira/regulation-reform) and the USDA website (http://www.usda.gov/wps/portal/usda/usdahome?navid=USDA_OPEN). In addition, USDA provides a link to its status reports in the annual Statement of Regulatory Priorities released by OMB in the fall. The USDA request for information (RFI) seeking public input on the USDA's retrospective review efforts also highlights USDA's key accomplishments and ongoing activities pursuant to its efforts to reduce regulatory burdens. Stakeholders may submit comments

[10] GAO-14-268

electronically to the Federal eRulemaking Portal, by e-mail, or by regular mail. USDA posts all comments submitted in response to the RFI. The primary repository for supporting documents, including analyses, is found through Reginfo.gov, which is maintained by the Office of Management and Budget. Should an individual wish to get more information on rulemaking or adjustments to information collections, the status report provides the Regulatory Identification Number (RIN) and the Office of Management and Budget Control Number, which allows individuals to access the additional detail through Reginfo.gov.

Post-Hearing Questions for the Record
Submitted to Mr. Christopher Zehren
From Senator Heidi Heitkamp

"Agency Progress in Retrospective Review of Existing Regulations"
November 5, 2015

Question:

A critical component of retrospective review is ensuring that the public has the opportunity to provide feedback on whether regulations are in fact achieving their intended objective. However, all too often we hear from the general public, small business, and other regulated entities, that they feel disconnected from the rulemaking process, or that their voices are not being heard.

a) Could each of you address how your agencies engage the public and seek feedback outside of the general notices published in the Federal Register?

Answer:

USDA agencies take numerous measures to engage stakeholders in the development of their regulations. In addition to publishing regulations in the *Federal Register*, agencies actively solicit public input on their regulatory strategies and retrospective review plans through routine stakeholder interactions, such as, constituent newsletters, policy area-specific listening sessions, roundtables, conferences, speeches, and other stakeholder forums. Agencies have also used social media to inform the public of their regulatory strategies and gather input on specific regulations. Advisory committees, industry boards, consumer organizations, and other professional panels play a significant role in getting the word out about regulations and gathering input from their members. Agencies also use Tribal consultation to provide information and receive direct input from the Native Americans on regulatory actions. All of these actions help agencies publicize the availability of documents published in the *Federal Register* and bring these documents to the attention of a wider audience.

Because USDA staff are geographically dispersed and have constant, one-on-one interactions with the public, customers are able to provide USDA employees immediate feedback on agency operations. In addition, periodic changes in legislative authority creates an ongoing opportunity for our stakeholders and Congress to directly weigh in on many of the major programs administered by the Department and to provide feedback on regulations in place to implement the programs being reauthorized. For example, to facilitate the implementation of the Agricultural Act of 2014 and the Healthy, Hunger-Free Kids Act (HHFKA) of 2010, USDA agencies held numerous stakeholder engagement meetings. Because of this robust, ongoing dialogue with stakeholders, if something is not working or can be done a better way, agencies hear about it.

Question:

b) Do you find that the Federal Register is still the most effective means of providing notice and receiving useful feedback to help identify public concerns?

Answer:

While the *Federal Register* is a valuable tool for soliciting public comment on specific regulatory proposals, USDA has found that the most effective means for gathering public input for developing a regulatory strategy that incorporates retrospective review continues to be through ongoing routine engagement with stakeholders.

Question:

When examining retrospective review, we often discuss cost benefit analysis to determine whether or not a rule is achieving its stated objective. However, part of this information collection requires the solicitation of data from regulated entities.

a) Do you find that current retrospective reviews are stymied by the strict requirements of the Paperwork Reduction Act?

Answer:

The Paperwork Reduction Act (PRA) requires agencies confine data requests to information needed to effectively administer the program and ensure program integrity. These requirements make it difficult to acquire data solely for analytical purposes.

b) Would we see an increased effectiveness of the retrospective review process if we were to exempt retrospective review activities from the Paperwork Reduction Act?

Answer:

We obtain most input for retrospective review from our regular interaction with those who are affected by our regulations and Federal Register notices requesting comment on retrospective review. The PRA typically is not a limiting factor in collecting general information from the public, as is often done through notifications in the Federal Register or other types of more-focused outreach. To the extent the PRA applies to more targeted collections of information, it is important that any data collected from regulated entities as part of a retrospective review has practical utility and comports with other parameters set forth in the PRA and its implementing regulations.

Question:

During our subcommittee's maiden hearing, we invited witness from diverse backgrounds to discuss the Federal government's regulatory framework. I took the opportunity to discuss

retrospective review with that panel as well. One thing I heard from both witnesses was that there needs to be a dedicated funding stream in support of retrospective review activities.

a) Based on current expectations of the President, as outlined in Executive Order 13563, are resources being dedicated to retrospective review at the detriment of the mission objectives of the agency?

Answer:

Since President Obama issued Executive Order 13563, USDA has initiated a rigorous, open, and robust review of its regulations, data sharing, and paperwork collections that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify streamline, expand, or repeal them accordingly. This effort has been a critical element of our strategy to better serve our customers and has complemented efforts to streamline administrative processes and optimize efficiency. Further, the periodic reauthorization of many of USDA's statutes through the Agricultural Act of 2014 and the Healthy, Hunger-Free Kids Act of 2010, have paved the way for implementing numerous program reforms that are consistent with the goals of the Executive Order 13563. As a result, USDA has been able to achieve its objectives, while operating within constrained funding levels.

Question:

b) What resources do your agencies need to effectively and efficiently carry out retrospective review while maintaining overall operational awareness?

Answer:

USDA has been able to balance effectively the need for retrospective review, while maintaining overall program awareness within available resources. To make the best use of available funds and staff years and achieve results important to our stakeholders, USDA used retrospective review to place an emphasis on streamlining administrative processes and reducing barriers to participation in USDA programs. These initiatives have worked in concert with the implementation of the periodic reauthorizations of a majority of USDA's legislative authorities to improve program performance and integrity.

Question:

In a previous hearing, Mr. Neil Eisner, a Senior Fellow at the Administrative Conference of the United States, advocated strengthening the culture of review within the Federal agencies. In his opinion there is a focus, especially among senior officials, on creating something new rather than fixing something old.

a) What actions are taken within each of your agencies to ensure that the workforce buys into the reality that ensuring the effectiveness of existing regulations is just as important as ensuring new rulemaking is of the highest caliber?

Answer:

To ensure that agencies are focused on improving the effectiveness of existing regulations as well as ensuring new rulemaking is of the highest caliber, USDA put in place a rigorous policy of regulatory review that coincides with the development of the unified regulatory agenda twice each year. USDA recognizes that the problems agencies are addressing through regulation are constantly changing and require modification in order to take into account advances in technology, changes in behavior, and other factors contributing to the effectiveness of regulatory actions. As part of the USDA regulatory review process, agencies are directed to identify where existing regulations and information collections can be improved, especially economically significant rules issued over the last 10 years and the most burdensome paperwork collections. Further, periodic changes in legislative authority contribute to USDA's effort to modernize its regulations and reduce paperwork burdens. For example, the Agricultural Act of 2014 and the Healthy, Hunger-Free Kids Act (HHFKA) of 2010, have both introduced numerous program reforms that eliminate obsolete and underperforming provisions, simplify the administration of programs, and improve program outcomes.

Question:

Understanding that good retrospective review often require examination of highly technical subject matter, it is important that agencies have a highly skilled and specialized work force to conduct retrospective reviews in an effective manner.

a) Having completed a number of retrospective reviews up to this point, what are some the challenges you have found as it relate to workforce, in completing retrospective review effectively?

Answer:

Between 2010 and 2015, USDA's operating budget is down 10 percent and staffing is down 11 percent overall with some agencies down much more. This makes it difficult for agencies not only to maintain staffing levels as people retire or leave the government, but provide the training needed to improve the analytical skills of its employees. Agencies must continually balance the need for retrospective review with implementing legislation and the effective day-to-day management of its programs.

b) Do you think the Federal Governments could do more to able to attract?

Answer:

I am unaware of any a particular instances in which an agency was not being able to attract individuals with the expertise needed to conduct retrospective review.

c) Do you have dedicated staff focused on reviewing existing rules?

Answer:

USDA agencies are organized differently. A number of agencies have staff dedicated to the development and analysis of regulations. However, a majority of agencies do not have staff dedicated to this purpose. In these instances regulatory development and analysis is only a part of an employee's overall responsibility. As a result, the need for rulemaking must be balanced with the need for effective operation of a program on a day-to- day basis.

Question:

Mr. Zehren, I know that the USDA is in a particularly different position when it comes to reviewing existing regulations. According to your testimony, a large percentage of the rules the USDA issues are based on the reauthorization of the Farm Bill. How has the USDA balanced reviewing existing regulations, when so many of your rules are based on reauthorization major bills?

Answer:

To ensure the highest priority needs are met, USDA conducts a top-to-bottom regulatory review twice each year as part of the development of the unified regulatory agenda. As part of this review, agencies identify specific topics, regulations, and paperwork collections that are outmoded, ineffective, or excessively burdensome, particularly those identified in comments received in response to the USDA retrospective review plan. Agencies are also directed to review economically significant rules issued over the last 10 years and the most burdensome paperwork collections to identify potential areas of reform. Agency submissions are evaluated and a set of regulatory priorities is established based on the following criteria: Urgency for improving customer service by means of simplification, streamlining, or improved quality of information collection procedures; comments from stakeholders; resource capacity and potential approval process timeline; and likelihood of statutory change. Both the 2014 Farm Bill and Healthy, Hunger-Free Kids Act of 2010 introduced numerous program reforms that eliminated obsolete and underperforming provisions, simplified the administration of programs, and improved program outcomes, while generating significant budgetary savings.

Post-Hearing Questions for the Record
Submitted to Ms. Megan Uzzell
From Senator James Lankford

"Agency Progress in Retrospective Review of Existing Regulations"
November 5, 2015

On Soliciting Comments from the Public

1. **In preparation for conducting retrospective reviews as directed under Executive Order 13563, Labor used an interactive website so that stakeholders could comment and vote on others' comments. Please elaborate on Labor's choice to use an interactive website rather than collecting comments on the Federal Register.**

    a. **What were some advantages and disadvantages of this approach?**

Answer: The Federal Register serves many important functions and for a wide-array of stakeholders it is an important place to gain knowledge about government activities. Accordingly, the Department published notices about our retrospective review engagement opportunity in the Federal Register. We recognize that there is not a one size fits all approach to engagement and that is why the Department uses a range of tools to seek input. For example, the Federal Register is not interactive and not every stakeholder community may have familiarity with it. The Department was interested in using a tool that provided for active engagement and could reach stakeholders who may not have otherwise participated in the process. That is why in 2011 and 2015, we elected to collect our comments on an interactive website, allowing our stakeholders to provide comments as well as view, vote on, and comment on each other's suggestions in real time. This also allowed stakeholders to address how suggestions could be implemented and improved. Providing notice of our website-based process in the Federal Register thus allowed us to reach a broad range of stakeholders.

    b. **What actions did Labor take to ensure that comments received through the interactive website were still available and accessible on the Federal Register?**

Answer: The Department has archived both our 2011 and 2015 suggestions in a docket on regulations.gov – the same website to which comments are often submitted in response to publications in the Federal Register.

    c. **During the hearing, you stated that Labor did not disadvantage a rule that may impact only a small number of stakeholders as a candidate for retrospective review. How did Labor ensure that the voting aspect of its interactive website did not lead to favoring the review of outdated regulations that affect many stakeholders?**

Answer: The interactive website allowed our stakeholders to view, vote on, and even comment on each other's suggestions in real time; however, no bar – numerical or otherwise – was

established to limit review of suggestions or dictate the outcome of the review. Every suggestion that was received was reviewed and considered by the Department.

On Consulting with the Small Business Community and State Regulators

2. **In your oral testimony, you cited the Small Business Administration's (SBA) Office of Advocacy as one tool you use to get feedback from small businesses. Please elaborate on your department's use of the SBA Office of Advocacy.**

Answer: The Department is committed to conducting substantial outreach in the development, dissemination, and implementation of items on our regulatory agenda. Because the SBA Office of Advocacy represents the interests of small businesses, by engaging with them we are better positioned to ensure more small businesses are represented in our stakeholder engagements. Frequently, we host listening sessions on particular items on our regulatory agenda that include small businesses or we participate in listening sessions hosted by the Office of Advocacy. We also periodically participate in quarterly stakeholder sessions convened by the Office of Advocacy on a range of issues.

a. How could your department better leverage the insights and resources of the Office of Advocacy?

Answer: The Department values our engagement with the Office of Advocacy and believes we appropriately leverage the insights and resources of this office. We also have a robust record of our own engagement with business stakeholders and will continue our commitments.

3. **How could your department better liaise with state regulators to ensure that regulations do not conflict with or duplicate state requirements?**

Answer: The Department of Labor administers and enforces more than 180 federal laws. In fulfilling its obligations under these laws, the Department is committed to conducting substantial outreach, including to state regulators, in the development, dissemination, and implementation of our regulatory agenda. When appropriate, we review and account for relevant state laws and regulations in the development of our regulations, for example, to calculate the projected costs and benefits of our proposals. We do not hesitate to reach out to state regulators when needed in order to ensure that our laws and regulations are implemented in harmony with state laws and regulations to the extent possible.

On Defining the Universe of Retrospective Reviews

4. **Retrospective reviews are not clearly defined in existing executive orders. For example, Executive Order 13563 merely directs agencies to "facilitate the periodic review of existing significant regulations..." Executive Order 13610 directs agencies to prioritize**

initiatives that will produce monetary savings, reductions in paperwork, reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. In the absence of a clear directive as to what constitutes a retrospective review as mandated by executive orders, how does your agency define the term?

Answer: The Office of Management and Budget provides guidance to the Department on how to conduct retrospective reviews. The Department has experience from completing 14 retrospective review initiatives. Additionally, when questions do arise, OMB is available to provide specific, well-tailored feedback on the Department's retrospective review efforts.

Thus far, the Department has focused our retrospective review initiatives on efforts to streamline, update, and modernize our existing regulations in line with governing law, Executive Orders, OMB guidance, stakeholder input, and agency priorities. Our retrospective review efforts often involve notice-and-comment rulemaking to revisit existing regulations. On a case-by-case basis as appropriate, we are also prospectively including plans to do retrospective reviews in our rulemakings.

On Regulatory Flexibility Act Review and other Statutorily-Required Reviews

5. **In 2014, in assessing retrospective review processes for Administrative Conference of the United States, Professor Joseph Aldy of Harvard's Kennedy School found that after reviewing 25 rules identified in agency reports on their progress implementing retrospective review, only 14 explicitly referenced retrospective review in the rule-making.[1] He posited that this suggested that some of the rules promulgated under the retrospective review process may have been already in progress, perhaps under existing statutory review authorities. How has your agency made the distinction between reviews in response to Executive Order 13563 and other efforts already underway or responses to new mandates?**

Answer: Retrospective review analysis is an integral part of the Department's rulemaking efforts and we work to identify new opportunities for retrospective review through a variety of mechanisms: robust stakeholder input, agency identification, and prospective retrospective reviews embedded in new regulations from their initial promulgation, to name a few. Each of these initiatives is included on our semiannual retrospective review reports, as directed by OIRA pursuant to EO 13563.[2]

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[1] Joseph Aldy for the Administrative Conference of the United States. Learning from Experience: An Assessment of the Retrospective Reviews of Agency Rules and the Evidence for Improving the Design and Implementation of Regulatory Policy 48 (November 17, 2014).

[2] Memorandum from Cass Sunstein (Oct. 26, 2011), https://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/implementation-of-retrospective-review-plans.pdf.

6. **The Regulatory Flexibility Act (RFA) Section 610 requires that rules with a significant economic impact on a substantial number of small entities be reviewed within ten years of promulgation, but in the past the Government Accountability Office (GAO) has found that not all agencies interpret the requirement consistently.[3] In addition, other statutes mandate retrospective review of certain regulations. How have initiatives in response to the President's Executive Order 13563 aligned with other retrospective review initiatives, such as those undertaken under RFA Section 610 or other specific statutory review requirements?**

Answer: Each of these authorities contributes to the Department's overall retrospective review agenda. There can be overlaps between the requirements. We will continue working to ensure our agenda appropriately prioritizes retrospective reviews in relationship to the Department's other efforts.

   a. **Please describe the rigor of Section 610 reviews. For example, is cost-benefit analysis typically conducted in the course of these reviews at your agency?**

Answer: The Department conducts retrospective reviews consistent with Section 610 of the Regulatory Flexibility Act of 1980. OSHA's process is instructive, and its Excavations Standard retrospective review has been hailed as an example of a successful review by SBA Advocacy.[4] After OSHA selects a standard for lookback review, it gathers information from affected parties about their experience with the standard, including with regards to the original cost-benefit analysis, and OSHA reviews relevant, available health, safety, economic, statistical, and feasibility data. OSHA also determines if there has been a material change in circumstances since the standard was issued.

OSHA publishes a Federal Register notice announcing the lookback review and requests information from the public on their experience with the standard. The notice also announces any OSHA-sponsored public meetings on the lookback review.

After all of the data and information for the lookback review are gathered and analyzed, OSHA prepares a report that presents the results of the lookback review and the Agency's resulting conclusions about whether to maintain, modify, or rescind the standard. Following a review by OSHA, the Department of Labor, and the Office of Management and Budget, the report is made available to the public. OSHA finally publishes a Federal Register notice that announces the conclusion of the lookback review, summarizes the results, and announces the public availability of the report.

OSHA has one such review currently underway, involving OSHA's Bloodborne Pathogens standard. As described in the process outlined above, that review included a solicitation of public

[3] U.S. GOV'T ACCOUNTABILITY OFFICE, REGULATORY FLEXIBILITY ACT: AGENCIE'S INTERPRETATIONS OF REVIEW REQUIREMENTS VARY WIDELY, GAO/GGD-99-55, 11 (Apr. 2, 1999)
[4] *Id.* at p.84-85.

comment on ways to modify the standard to reduce the regulatory burden on small businesses. OSHA maintains a website summarizing the results of its eight previous 610 reviews.[5]

b. What lessons has the agency learned from conducting additional reviews consistent with other statutory mandates that have facilitated this retrospective review initiative?

Answer: Section 610 reviews are important. They are, however, only one component of our broader efforts on retrospective review. The Department recognizes the importance of retrospective review and it is part of our consideration when we decide which rules to add to the regulatory agenda or to prioritize among our regulatory initiatives. But, in keeping with the spirit of Section 610, the Department has also included retrospective analysis requirements in certain new regulations to facilitate evaluation of their impact. For example, the Department's Mine Safety and Health Administration announced in its 2014 Respirable Dust Final Rule (79 Fed. Reg. 24,814) that it will conduct a retrospective review to evaluate the data collected using continuous personal dust monitors in 2017. *Id.* at 24,867. OSHA's Final Rule on Recordkeeping and Reporting Requirements – moving from the Standard Industrial Classification System to the North American Industry Classification System for determining which industries are low-hazard and potentially exempt from recordkeeping requirements – also includes a commitment to conduct a retrospective review of the agency's recordkeeping regulations.

On Quantifying Cost Savings

7. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, GAO found that agencies quantified cost savings in the progress updates for 38 of the 246 completed analyses in their scope, half of which were related to information collection burdens.[6] Why are cost savings not consistently quantified?

Answer: The Department's retrospective review efforts often result in notice-and-comment rulemaking to streamline, update, and modernize our existing regulations. These rulemaking efforts are conducted in line with governing laws and executive orders, including EO 12866, which requires the use of regulatory impact analysis in certain circumstances. Costs and benefits are quantified, monetized, or analyzed qualitatively consistent with OMB's guidance in Circular A-4.[7]

a. When costs savings were quantified, GAO found that agencies most often attributed those savings to reduced information collection burdens. What other cost savings have resulted from these retrospective reviews?

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[5] https://www.osha.gov/dea/lookback html.
[6] U.S. GOV'T ACCOUNTABILITY OFFICE, AGENCIES OFTEN MADE REGULATORY CHANGES, BUT COULD STRENGTHEN LINKAGES TO PERFORMANCE GOALS, GAO-14-268 (Apr. 11, 2014)
[7] OMB, Memorandum to Agency Heads, Circular A-4 (Sep. 17, 2003), https://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf.

Answer: Information collection is only one source of cost savings in the Department's retrospective reviews. For example, OSHA's third Standards Improvement Project relaxed the frequency of maritime rigging inspections from every four years to every five years. As the Final Rule explained, the new requirement for rigging inspections reduced total number of each year by 20 percent (i.e., by 301 inspections), resulting in an annual employer cost savings of $168,560.[8]

b. **What are the challenges in quantifying the results of these reviews and how could we do better at reporting that progress?**

Quantifying the economic effects of a rulemaking effort can be challenging absent relevant research that establishes reliable models. Because such research is often not available, conducting such analysis may not represent the best use of resources.

The biannual retrospective review reporting template provides sufficient direction for reporting the progress of these reviews. The Department will continue to ensure transparency in its conclusions of such reviews.

On Record of Results of Reviews

8. **In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, GAO found that more than 90 percent of the retrospective review analyses they examined ended in a determination to revise, clarify, or eliminate regulatory text.[9] Would you attribute this success to how your agencies prioritized the regulations you reviewed or simply that a lot of regulations currently on the books are ripe for updates?**

Answer: Since the EO's release in 2011, the Department has completed 14 retrospective review initiatives, each of which has resulted in changes to regulatory text. The Department is strategic in its selection of rules to retrospectively review in order to maintain the ability to achieve our mission while reducing burden. The Department's commitment to robust external stakeholder engagement to identify opportunities for retrospective review has also been a key to our success.

a. **How many of these reviews could be considered low-hanging fruit? Should we expect this level of success going forward?**

Resources to conduct retrospective review necessarily compete with other priorities. The Department has already identified many of the opportunities to simply rescind outdated regulations and taken action accordingly. But the Department is always seeking opportunities to conduct additional retrospective reviews and to advance such reviews is a priority for DOL. For

[8] OSHA, Standards Improvement Project Final Rule, 76 Fed. Reg. 33,590 (2011), https://www.gpo.gov/fdsys/pkg/FR-2011-06-08/pdf/2011-13517.pdf.
[9] GAO-14-268

example, in coming years, the Department will begin to pursue the "prospective" retrospective reviews that have been built into recent priority rulemakings. While there are limited available "low-hanging fruit" options, the Department is not shying away from its commitment to drive retrospective review.

On Rigor and Scope of Retrospective Review

9. In his analysis of retrospective reviews for Mercatus, Mr. Randall Lutter notes, "Very few retrospective analyses of extant federal regulations provide sufficient information to evaluate whether benefits outweighed costs. The overwhelming majority of retrospective analyses that Harrington, the OMB, and Simpson reviewed provide information only about costs, about a key but incomplete measure of benefits... or about both costs and a poor proxy for benefits..."[10] Do your retrospective review analyses attempt to quantify costs, or benefits, or both?

Answer: The Department's retrospective review efforts often result in notice-and-comment rulemaking to streamline, update, and modernize our existing regulations. These rulemaking efforts are conducted in line with governing laws and executive orders, including EO 12866, which requires the use of regulatory impact analysis in certain circumstances. Consistent with OMB's guidance in Circular A-4, costs and benefits are quantified and monetized when possible—typically relative to the original estimate of the standard's cost and benefits, or, at a minimum, analyzed qualitatively.[11]

a. Does your office have the capacity to collect data to conduct effective retrospective reviews that include cost-benefit analysis? If not, why not?

Each agency that pursues rulemaking as part of the Department's retrospective review efforts conducts cost-benefit analysis as required under EO 12866.

b. Would it be beneficial for your agency to have your retrospective review obligations delegated to a specialized office charged with doing just that?

No, retrospective review efforts require program-specific expertise, which places each agency in the best position to pursue its own retrospective review efforts. Among other challenges, centralizing retrospective review efforts would result in far less efficient rulemaking efforts.

10. In his analysis of retrospective reviews for Mercatus, Mr. Lutter notes, "The focus on retrospective analysis and review of regulations, as opposed to regulatory programs more broadly, may be too narrow." The 2015 OECD Regulatory Policy Outlook stated

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[10] Randall Lutter, Working Paper: The Role of Retrospective Analysis and Review in Regulatory Policy, MERCATUS CTR. NO. 12-14 (Apr. 2012).
[11] OMB, Memorandum to Agency Heads, Circular A-4 (Sep. 17, 2003), https://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf.

that "OECD countries could be more strategic and systemic in their evaluation efforts by conducting comprehensive reviews that assess the cumulative impact of laws and regulations in a sector as a whole, with a particular focus on the policy outcomes."[12] Our proposed legislation, S. 1817 *The Smarter Regs Act of 2015*, directs OMB to encourage and assist agencies to "streamline and coordinate the assessment of major rules with similar or related regulatory objectives" for just this purpose. When contemplating which rules to review, have you ever considered conducting simultaneous reviews on related rules or rules that affect a certain sector of industry?

Answer: OSHA's Standards Improvement Project rulemakings provide a prime example of how a retrospective review initiative can consider related rules covering a certain industry. In fact, OSHA's upcoming Standards Improvement Project IV rulemaking builds upon a 2012 request for information that sought to identify opportunities to streamline or modernize primarily construction industry standards.[13] The NPRM is expected to cover a number of OSHA standards that affect construction.

a. **Have you ever considered a large retrospective review on a regulatory framework?**

Answer: See prior answer.

b. **What barriers exist to this type of review?**

Answer: This type of review is always constrained by agency rulemaking resources. As explained above, rigorous and effective retrospective review requires the same agency expertise as any rulemaking effort. These efforts must therefore be pursued and prioritized in the context of other regulatory efforts.

c. **How have you worked with interagency partners as you have reviewed existing regulations?**

Answer: The Department values interagency efforts to improve retrospective review. For example, the Department has coordinated with interagency colleagues on best practices to manage a robust stakeholder engagement effort to identify candidates for retrospective reviews.

11. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*[14], GAO recommended that OIRA work with the agencies to improve how retrospective reviews

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[12] OECD Regulatory Policy Outlook 2015 (The Organization for Economic Co-operation and Development, 2015) available at http://www.oecd.org/governance/regulatory-policy/oecd-regulatory-policy-outlook-2015-9789264238770-en htm.
[13] 77 Fed. Reg. 72,781 (Dec. 6, 2012), https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=23534.
[14] GAO-14-268

could be used to inform progress towards agency priority goals under the GPRA Modernization Act of 2010.[15] This included actions such as (1) identifying whether a regulation contributes to an agency priority goal as one criterion for prioritizing reviews, and (2) by including in the scope of retrospective reviews the regulations that collectively contribute to an agency priority goal. What actions has your agency taken to better align retrospective reviews with GPRAMA agency priority goals?

Answer: As with any agency, the Department will always have limited resources when it comes to pursuing regulatory efforts. Each agency has to prioritize its rulemaking efforts – including retrospective review initiatives – and GPRA goals are a factor in setting priorities. Stakeholder engagement efforts can nonetheless help identify retrospective review efforts that can align with GPRA goals.

On Planning for Review

12. **OMB Memorandum M-11-19 directed agencies to design and write future regulations in ways that facilitate evaluation of their consequences and thus promote retrospective analyses. ACUS recommendation 2014-5 suggested that agencies, when appropriate, establish a framework for reassessing the regulation in the future and should consider including portions of the framework in the rule's preamble. On November 3, 2015, the GW Regulatory Studies Center issued *Learning from Experience: Retrospective Review of Regulations in 2014*[16], which reviewed 22 significant and economically significant rules and found that none of them included a plan to conduct retrospective review of the rule after implementation. How has your agency responded to that OIRA directive and what have you learned through those efforts?**

Answer: The Department has taken steps to include retrospective analysis requirements in new regulations to facilitate evaluation of their impact. For example, the Department's Mine Safety and Health Administration announced in its 2014 Respirable Dust Final Rule that it will conduct a retrospective review to evaluate the data collected using continuous personal dust monitors in 2017. Also, OSHA's Final Rule on Recordkeeping and Reporting Requirements – moving from the Standard Industrial Classification System to the North American Industry Classification System for determining which industries are low-hazard and potentially exempt from recordkeeping requirements – also includes a commitment to conduct a retrospective review of the agency's recordkeeping regulations.

a. **What actions does your agency plan to take to ensure that planning for future reviews is part of the procedures for drafting new regulations?**

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[15] GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (Jan. 4, 2011).

[16] Sofie E. Miller, *Learning From Experience: Retrospective Review of Regulations in 2014* (The George Washington University Regulatory Studies Center, Working Paper, 2015), *available at* http://regulatorystudies.columbian.gwu.edu/learning-experience-retrospective-review-regulations-2014.

Answer: As discussed in the prior answer, the Department's agencies have included retrospective analysis requirements in new regulations to facilitate evaluation of their impact. The Department will continue to identify such opportunities.

13. The Department of Transportation (DOT) maintains a plan on its website to ensure that all regulations are reviewed every ten years. Each DOT agency divides its rules into 10 different groups, and analyzes one group each year. They request public comment on the timing of the reviews through the Regulatory Agenda (for example, if a particular rule should be reviewed earlier and why). Would something like this be viable at your agency?

Answer: The Department would be pleased to consult with DOT to learn more about its processes and outcomes.

a. How do you ensure that cyclical reviews are apparent to your stakeholders to give them an opportunity to comment?

Answer: The Department finds that engaging stakeholders – both internal and external – is a particularly fruitful way to identify opportunities for retrospective review. Some of the Department's most successful, win-win efforts have come from stakeholder suggestions – like OSHA's mechanical power press requirements, mentioned previously. While the Department has several day-to-day mechanisms for soliciting such feedback, periodic broader efforts to solicit opportunities for retrospective review are useful as well. This year, for example, the Department launched a broad, technology driven stakeholder engagement effort to solicit ideas from internal and external stakeholders alike. This year's stakeholder engagement efforts – combined with a number of permanent labor certification program (PERM) – specific listening sessions – encouraged the Department to announce in its February 2015 Retrospective Review Report that the Employment and Training Administration would undertake a reform of the PERM program regulations.

Reporting Outcomes of Retrospective Review

14. **In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*[17], GAO recommended that OIRA work with agencies to improve the reporting of retrospective review outcomes, including providing more comprehensive information about completed reviews. What actions has your agency taken to ensure that retrospective review reporting is more accessible and transparent?**

Answer: The Department is committed in making retrospective review reporting more accessible and transparent. The Department has adopted OIRA's new template for biannual retrospective review reports – launched in February 2015 – which provides more comprehensive

[17] GAO-14-268

information about reviews that are underway and recently completed, adding fields for: noting which initiatives are new versus those that are ongoing; listing the regulatory flexibilities included in each rule (such as pilot projects, safe harbor exemptions, sunset provisions, trigger provisions, streamlined requirements, state flexibilities, or other similar strategies); and any methods planned to engage the public in identifying improvements (such as public comment, analyses, third party assessments, etc.).

Post-Hearing Questions for the Record
Submitted to Ms. Megan Uzzell
From Senator Heidi Heitkamp

"Agency Progress in Retrospective Review of Existing Regulations"
November 5, 2015

1. **A critical component of retrospective review is ensuring that the public has the opportunity to provide feedback on whether regulations are in fact achieving their intended objective. However, all too often we hear from the general public, small business, and other regulated entities, that they feel disconnected from the rulemaking process, or that their voices are not being heard.**

   a. **Could each of you address how your agencies engage the public and seek feedback outside of the general notices published in the Federal Register?**

Answer: The Department finds that engaging stakeholders – both internal and external – is a particularly fruitful way to identify opportunities for retrospective review. Some of the Department's most successful, win-win efforts have come from stakeholder suggestions. While the Department has several day-to-day mechanisms for soliciting such feedback, periodic broader efforts to solicit opportunities for retrospective review are useful as well. In 2015, for example, the Department launched a broad, technology-driven stakeholder engagement effort to solicit ideas from internal and external stakeholders alike. Our 2015 stakeholder engagement efforts—combined with a number of permanent labor certification program (PERM) specific listening sessions—encouraged the Department to announce in its February 2015 Retrospective Review Report that the Employment and Training Administration would undertake a reform of the PERM program regulation. We have also established an email address (retrospectivereview@dol.gov) to give the public a mechanism to provide retrospective review suggestions anytime.

   b. **Do you find that the Federal Register is still the most effective means of providing notice and receiving useful feedback to help identify public concerns?**

Answer: The Federal Register serves many important functions, and for a wide array of stakeholders, it is an important place to gain knowledge about government activities. Accordingly, the Department published notices about our retrospective review engagement opportunity in the Federal Register. We recognize that there is not a one-size-fits-all approach to engagement, and that is why the Department uses a range of tools to seek input. For example, the Federal Register is not interactive, and not every stakeholder community may have familiarity with it. The Department was interested in using a tool that provided for active engagement and could reach stakeholders who may not have otherwise participated in the process. That is why in 2011 and 2015 we elected to collect our comments on an interactive website, allowing our stakeholders to provide comments as well as view, vote on, and comment on each other's suggestions in real time. This also allowed stakeholders to address how suggestions could be implemented and improved. Providing notice of our website-based process in the Federal

Register thus allowed us to reach a broad range of stakeholders while still leveraging the benefits of an interactive website.

2. **During our subcommittee's maiden hearing, we invited witness from diverse backgrounds to discuss the Federal government's regulatory framework. I took the opportunity to discuss retrospective review with that panel as well. One thing I heard from both witnesses was that there needs to be a dedicated funding stream in support of retrospective review activities.**

   a. **Based on current expectations of the President, as outlined in Executive Order 13563, are resources being dedicated to retrospective review at the detriment of the mission objectives of the agency?**

Answer: Resources such as human capital dedicated to retrospective review flow from the same streams as non-retrospective review regulatory work. The Department will always have limited resources when it comes to pursuing regulatory efforts. Thus, resources to conduct retrospective review necessarily compete with other priorities, and a dedicated funding stream alone will not resolve that inherent tension. In particular, it is important to note that successful retrospective review efforts generally require the same sorts of subject matter expertise as affirmative rulemaking, so generalized resources are insufficient to conduct retrospective reviews in particular subject areas.

   b. **What resources do your agencies need to effectively and efficiently carry out retrospective review while maintaining overall operational awareness?**

Answer: As with any agency, the Department will always have limited resources, funding, and human capital when it comes to pursuing our regulatory goals. Each of our agencies has to view all of our rulemaking through the lens of prioritization.

3. **In a previous hearing, Mr. Neil Eisner, a Senior Fellow at the Administrative Conference of the United States, advocated strengthening the culture of review within the Federal agencies. In his opinion there is a focus, especially among senior officials, on creating something new rather than fixing something old.**

   a. **What actions are taken within each of your agencies to ensure that the workforce buys into the reality that ensuring the effectiveness of existing regulations is just as important as ensuring new rulemaking is of the highest caliber?**

Answer: The Department has driven and embraced culture change, and our employees share the view that existing regulations should be just as effective as the new regulations we are drafting. The Department is strategic in its selection of rules to retrospectively review in order to maintain the ability to achieve our mission while reducing burden. The Department's commitment to robust internal and external stakeholder engagement and acknowledgment of participation in the

process to identify opportunities for retrospective review has also been a key to our success. We have also built "prospective retrospective reviews" into several of our highest priority rules, including MSHA's respirable dust final rule, which requires the agency to conduct a retrospective review of the effectiveness of a new technology that we are requiring (continuous personal dust monitors) beginning on February 1, 2017.

4. **Understanding that good retrospective review often require examination of highly technical subject matter, it is important that agencies have a highly skilled and specialized work force to conduct retrospective reviews in an effective manner.**

   a. **Having completed a number of retrospective reviews up to this point, what are some the challenges you have found as it relate to workforce, in completing retrospective review effectively?**

Answer: The Department will always have limited resources when it comes to pursuing our regulatory goals. Each of our agencies has to view all of our rulemaking through the lens of prioritization, and our teams draw on subject matter experts in both rulemaking and implementation. In addition, the expectation that some have that retrospective review regulations should account for a full quantification of the economic effects of the rulemaking is challenging to overcome. It is not always appropriate, nor are reliable models always available, to permit such an analysis. It is important to establish an understanding of the need for flexibility in the various types of retrospective reviews that can be conducted.

   b. **Do you think the Federal Government could do more to be able to attract and retain employees with the expertise needed to do federal rulemaking or retrospective review?**

Answer: We think that we have the tools necessary to attract and retain top-level talent. However, as stated above, lack of resources continue to place a strain on federal employees.

   c. **Do you have dedicated staff focused on reviewing existing rules?**

Answer: Retrospective review analysis is an integral part of the Department's rulemaking efforts, and we work to identify new opportunities for retrospective review through a variety of mechanisms. One mechanism is by convening an interagency working group of regulatory leads that gathers and shares best practices. This interagency working group can help analyze the results of our robust stakeholder engagement efforts to identify candidates for retrospective reviews. In addition to this, as described above, the Department encourages component agencies to start building prospective retrospective reviews into their rules.

Post-Hearing Questions for the Record
Submitted to Mr. Bill Nickerson
From Senator James Lankford

"Agency Progress in Retrospective Review of Existing Regulations"
November 5, 2015

On Reviewed Regulations

1. The EPA began a new review process to streamline Significant New Alternatives Program (SNAP) reviews of potential alternatives to ozone-depleting chemicals that manufactures could use in consumer products (such as aerosol cans, adhesives, cleaning solvents, refrigeration, and air conditioning systems). The EPA estimates that these efforts could reduce EPA's review time for SNAP submittals from an average of 65 weeks to an average of 19-24 weeks (a 60%-70% improvement). While I applaud this result, why was this streamlining process not begun earlier?

   RESPONSE: The EPA continually looks for ways to improve the efficiency of our programs. Over the past 20 years, the SNAP program has reviewed over 400 alternatives considering such factors as flammability, toxicity, local air quality impacts, ecosystem effects, occupational and consumer health and safety impacts, ozone depletion potential and global warming potential. On the basis of those assessments, the EPA has issued 20 rulemakings and 30 notices to facilitate the introduction of lower risk alternatives into the marketplace. Additionally, our participation in the Lean Government program provided an opportunity to streamline our program and achieve significant benefits for both the agency and our stakeholders. For more information about the Lean government program visit www.epa.gov/lean.

2. In February 2014 EPA issued a final rule that established a framework for collecting hazardous waste shipment data electronically, replacing a burdensome paper manifest system that requires six-copy forms to be completed, carried and signed manually. Why did the EPA wait until 2014 to finalize a rule that eliminated the requirement for a six-copy form that needed to be completed manually?

   RESPONSE: The EPA issued its final regulation on the use of electronic manifests in February 2014 in response to a statutory mandate that was contained in the Electronic Hazardous Waste Manifest Establishment Act (e-Manifest Act). The e-Manifest Act was enacted in October 2012, and required the EPA to issue implementing regulations for an electronic manifest within one year of enactment. The e-Manifest Act required the EPA to develop a national electronic manifest system, and required that the cost of developing and operating this system be offset by user fees. The EPA could not develop a final regulation for electronic manifesting until the e-Manifest legislation authorizing the system was enacted. The EPA was able to issue the final regulation shortly after the e-Manifest Act's one-year milestone.

   It should be noted that the e-Manifest Act and the February 2014 regulation do not entirely eliminate the six-copy paper manifest form. The e-Manifest Act provides that electronic manifests shall be an option for manifest users, so the EPA's implementing regulations for the

Act likewise provide that users may elect to use either electronic or paper manifests in the future.

On Consulting with the Small Business Community and State Regulators

3. In your oral testimony, you cited the Small Business Administration's (SBA) Office of Advocacy as one tool your agency uses to get feedback from small businesses. Please elaborate on your department's use of the SBA Office of Advocacy.
   a. How could your department better leverage the insights and resources of the Office of Advocacy?

   RESPONSE: The EPA has several established mechanisms for working with SBA's Office of Advocacy.
   - The EPA staff and managers regularly participate in roundtable discussions organized by the SBA's Office of Advocacy.
   - The SBA's Office of Advocacy staff participate with the EPA on all Small Business Advocacy Review panels for proposed rules that may have a significant impact on a substantial number of small entities.
   - When the EPA announces a review of a regulatory action under section 610 of the Regulatory Flexibility Act (RFA), the SBA distributes the announcement to their stakeholder groups.
   - The EPA's Office of Small Business Programs organizes semiannual meetings with senior agency officials and stakeholders, and the SBA's Office of Advocacy is invited to these meetings.
   - The SBA's Office of Advocacy participates in the Office of Management and Budget (OMB)-led interagency review of agency regulations.

4. How could your department better liaise with state regulators to ensure that regulations do not conflict with or duplicate state requirements?

   RESPONSE: Since many agency programs are implemented by the states, we have close working relationships with them across many of our programs. The EPA facilitates interactions with state and local governments and coordinates those activities with our regional offices around the nation. In addition, the EPA holds regular outreach meetings with the Environmental Council of the States, Council of State Governments, National Conference of State Legislatures, and the National Governors Association and leads implementation of the National Environmental Performance Partnership System, which manages and monitors environmental issues with both national associations and individual state and local governments while focusing the EPA and state resources on the most pressing environmental problems. Each regulation issued by the EPA specifically addresses the agency's consideration of potential intergovernmental impacts consistent with the mandates in the Unfunded Mandates Reform Act and the Federalism Executive Order (E.O.) 13132. In addition, agency programs have direct connections to state regulators and the EPA often addresses program implementation issues collaboratively.

On Soliciting Comments from the Public

5. In preparation for conducting retrospective reviews as directed under Executive Order 13563, agencies have reached out for public comment in a variety of ways. Please elaborate on the advantages you witnessed in holding public hearings.
   a. How do hearings differ from other ways to get feedback from the public, for example, through receipt of comments in online dockets?
   b. What were some advantages and disadvantages of this approach?

   RESPONSE: The EPA uses a variety of external mechanisms to identify and evaluate potential retrospective reviews. The EPA's Retrospective Review Plan was developed after extensive public outreach that sought input on an agency plan for retrospective review, as well as on possible reforms to modify, streamline, expand or repeal existing regulations. That outreach included 20 public meetings, town halls, and Webinars with over 600 participants. The EPA also solicited comments via a Federal Register notice. Since 2011, the EPA has maintained an open comment docket and an e-mail address for public feedback on the existing Plan for Periodic Retrospective Review of Existing Regulations and the subsequent progress reports. In 2015, the EPA also issued another Federal Register notice soliciting comments on issues related to retrospective review.

   Regardless of how the EPA receives this information, specific suggestions regarding how rules could be modified accompanied by data or other detailed information that supports the request are the types of responses that are most useful to the agency. While public meetings can potentially reach a slightly different audience than do Federal Register notices, in our experience, the feedback from public meetings tends to be more general than the feedback received in writing. Large, broad public-meetings focused generally on retrospective review are also very resource-intensive, requiring significant amounts of time to organize and run. In addition to public meetings and Federal Register notices, the EPA also regularly meets with stakeholder and advisory groups such as the Environmental Council of the States and the National Drinking Water Advisory Committee on a variety of issues and has found the feedback regarding retrospective review offered at these types of meetings to be helpful.

On Defining the Universe of Retrospective Reviews

6. Retrospective reviews are not clearly defined in existing executive orders. For example, Executive Order 13563 merely directs agencies to "facilitate the periodic review of existing significant regulations..." Executive Order 13610 directs agencies to prioritize initiatives that will produce monetary savings, reductions in paperwork, reduce unjustified regulatory burdens or simplify or harmonize regulatory requirements imposed on small businesses. In the absence of a clear directive as to what constitutes a retrospective review as mandated by executive orders, how does your agency define the term?

   RESPONSE: At the EPA, retrospective reviews can take a variety of forms and may be guided by the purpose and principles stated in E.O. 13563 or applicable statutes. Regular assessment of past regulatory actions is integral to the EPA's core mission and responsibilities and is often

mandated by statute. For example, the Clean Air Act (CAA) requires a review of National Ambient Air Quality Standards actions every five years. New Source Performance Standards and Maximum Achievable Control Technology must be reviewed every eight years. Under the Safe Drinking Water Act (SDWA), the EPA is required to review National Primary Drinking Water Regulations every six years. In addition to these statutorily mandated reviews, the EPA undertakes discretionary reviews, including those highlighted in our Retrospective Review Plan.

On Regulatory Flexibility Act Review and other Statutorily-Required Reviews

7. In 2014, in assessing retrospective review processes for Administrative Conference of the United States, Professor Joseph Aldy of Harvard's Kennedy School found that after reviewing 25 rules identified in agency reports on their progress implementing retrospective review, only 14 explicitly referenced retrospective review in the rule-making.[1] He posited that this suggested that some of the rules promulgated under the retrospective review process may have been already in progress, perhaps under existing statutory review authorities. How has your agency made the distinction between reviews in response to Executive Order 13563 and other efforts already underway or responses to new mandates?

   RESPONSE: As noted above, regular assessment of past regulatory actions is integral to the EPA's core mission. Reviews undertaken in response to E.O. 13563 are highlighted in our Retrospective Review Plan and progress reports.[2] The EPA does not generally discuss in the preamble whether or not a specific rule was part of our original Plan or was an action later added to our progress report; therefore the absence of this information should not be taken as an indicator that a particular review was in progress at the time our Plan was developed. In addition, the EPA has added numerous reviews to our progress reports since our initial Retrospective Review Plan was developed. Nearly all of the actions identified in our current Retrospective Review Plan are in addition to those reviews required by statute.

8. The Regulatory Flexibility Act (RFA) Section 610 requires that rules with a significant economic impact on a substantial number of small entities be reviewed within ten years of promulgation, but in the past the Government Accountability Office (GAO) has found that not all agencies interpret the requirement consistently.[3] In addition, other statutes mandate retrospective review of certain regulations. How have initiatives in response to the President's Executive Order 13563 aligned with other retrospective review initiatives, such as those undertaken under RFA Section 610 or other specific statutory review requirements?
   a. Please describe the rigor of Section 610 reviews. For example, is cost-benefit analysis typically conducted in the course of these reviews at your agency?
   b. What lessons has the agency learned from conducting additional reviews consistent with other statutory mandates that have facilitated this retrospective review initiative?

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[1] Joseph Aldy for the Administrative Conference of the United States. Learning from Experience: An Assessment of the Retrospective Reviews of Agency Rules and the Evidence for Improving the Design and Implementation of Regulatory Policy 48 (November 17, 2014).
[2] http://www.epa.gov/laws-regulations/retrospective-review-history
[3] U.S. GOV'T ACCOUNTABILITY OFFICE, REGULATORY FLEXIBILITY ACT: AGENCIE'S INTERPRETATIONS OF REVIEW REQUIREMENTS VARY WIDELY, GAO/GGD-99-55, 11 (Apr. 2, 1999)

RESPONSE: Section 610 of the RFA provides that agencies shall review rules to "minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes." In doing so, agencies are charged with considering the following factors:

(1) the continued need for the rule;
(2) the nature of complaints or comments received concerning the rule from the public;
(3) the complexity of the rule;
(4) the extent to which the rule overlaps, duplicates or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and
(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

The EPA uses the Semiannual Regulatory Agenda, which publishes in the Federal Register every six months, to announce the initiation and conclusion of these 610 reviews. Upcoming reviews are also listed on the EPA's Web site.[4] As directed under E.O. 13563, in the EPA's 2011 *Final Plan for Periodic Retrospective Reviews of Existing Regulations*, the EPA committed to combining retrospective reviews of rules under RFA 610 with other statutorily-required reviews, such as those required under the CAA or SDWA, whenever feasible. The EPA's retrospective review initiatives taken in response to E.O. 13563 are in addition to statutory reviews we already conduct under Section 610 of the RFA, the CAA, SDWA, and other statutes.

On Quantifying Cost Savings

9. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, GAO found that agencies quantified cost savings in the progress updates for 38 of the 246 completed analyses in their scope, half of which were related to information collection burdens.[5] Why are cost savings not consistently quantified?
    c. When costs savings were quantified, GAO found that agencies most often attributed those savings to reduced information collection burdens. What other cost savings have resulted from these retrospective reviews?
    d. What are the challenges in quantifying the results of these reviews and how could we do better at reporting that progress?

    RESPONSE: Lack of monetization does not mean that costs and benefits are not realized. Cost savings that can be realized in retrospective review include not only monetary savings from reduced regulatory requirements and reductions in paperwork burdens, but also harder to quantify savings from activities such as streamlined permitting or review processes and greater use of advanced technology.

[4] http://www.epa.gov/reg-flex/section-610-reviews
[5] U.S. GOV'T ACCOUNTABILITY OFFICE, AGENCIES OFTEN MADE REGULATORY CHANGES, BUT COULD STRENGTHEN LINKAGES TO PERFORMANCE GOALS, GAO-14-268 (Apr. 11, 2014)

Consistent with the direction provided in E.O. 13610, there has been a focus on reducing paperwork burden as part of our efforts in retrospective review. Since rules that require information collection have estimates of the costs associated with that information collection as required by the Paperwork Reduction Act, it tends to be easier to quantify and monetize the savings from paperwork burden reduction.

On Record of Results of Reviews

10. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*, GAO found that more than 90 percent of the retrospective review analyses they examined ended in a determination to revise, clarify, or eliminate regulatory text.[6] Would you attribute this success to how your agencies prioritized the regulations you reviewed or simply that a lot of regulations currently on the books are ripe for updates?
    e. How many of these reviews could be considered low-hanging fruit? Should we expect this level of success going forward?

    RESPONSE: As stated in the EPA's 2011 *Final Plan for Periodic Retrospective Reviews of Existing Regulations*, the EPA determined its review priorities by gathering comments from the public, other federal agencies, and agency experts; aligning reviews with agency and The Administration's priorities; conforming to the principles and directives of E.O. 13563; and determining appropriate effort within the scope of current agency resources. Using these criteria, the EPA was able to determine the most appropriate items for review, and has subsequently added additional items to the Retrospective Review Plan using these same criteria. We believe this method has been effective at identifying actions that may warrant review and will continue to serve the interests of both the EPA and the public going forward.

On Rigor and Scope of Retrospective Review

11. In his analysis of retrospective reviews for Mercatus, Mr. Randall Lutter notes, "Very few retrospective analyses of extant federal regulations provide sufficient information to evaluate whether benefits outweighed costs. The overwhelming majority of retrospective analyses that Harrington, the OMB, and Simpson reviewed provide information only about costs, about a key but incomplete measure of benefits… or about both costs and a poor proxy for benefits…"[7] Do your retrospective review analyses attempt to quantify costs, or benefits, or both?

    f. Does your office have the capacity to collect data to conduct effective retrospective reviews that include cost-benefit analysis? If not, why not?
    g. Would it be beneficial for your agency to have your retrospective review obligations delegated to a specialized office charged with doing just that?

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[6] GAO-14-268

[7] Randall Lutter, Working Paper: The Role of Retrospective Analysis and Review in Regulatory Policy, MERCATUS CTR. NO. 12-14 (Apr. 2012).

RESPONSE: Retrospective reviews that occur through standard rulemaking procedures generally attempt to quantify the costs and benefits of the regulatory revision resulting from the review. However, sufficient data and information may not be available to conduct a detailed assessment of the costs and benefits of these reviews. Collection of additional information may require approval under the Paperwork Reduction Act and may also impose additional paperwork burden on the entities regulated by the action under review. Since retrospective reviews relate back to a particular regulatory action or program, the EPA generally believes that it is often beneficial for staff who are familiar with that regulatory action or program and have relevant skills and experience with that regulatory action or program to work on the retrospective review.

12. In his analysis of retrospective reviews for Mercatus, Mr. Lutter notes, "The focus on retrospective analysis and review of regulations, as opposed to regulatory programs more broadly, may be too narrow." The 2015 OECD Regulatory Policy Outlook stated that "OECD countries could be more strategic and systemic in their evaluation efforts by conducting comprehensive reviews that assess the cumulative impact of laws and regulations in a sector as a whole, with a particular focus on the policy outcomes."[8] Our proposed legislation, S. 1817, The Smarter Regs Act of 2015, directs OMB to encourage and assist agencies to "streamline and coordinate the assessment of major rules with similar or related regulatory objectives" for just this purpose. When contemplating which rules to review, have you ever considered conducting simultaneous reviews on related rules or rules that affect a certain sector of industry?

    h. Have you ever considered a large retrospective review on a regulatory framework?
    i. What barriers exist to this type of review?
    j. How have you worked with interagency partners as you have reviewed existing regulations?

    RESPONSE: The EPA's focus has been on those regulations or requirements identified by our stakeholders and the public through our outreach efforts. As such, the reviews reflect their interests, either in terms of individual regulations and requirements or particular programs. The EPA has undertaken broader reviews, including an action to reduce State Implementation Plan backlogs and reduce future processing time, and an action to streamline SNAP reviews. We work with interagency partners on our retrospective reviews in that other federal agencies can and have suggested rules for review, and any reviews that affect other agencies that are done through rulemaking would be submitted to OMB for interagency review under E.O. 12866.

13. In the April 2014 GAO report Reexamining Regulations: Agencies Often Made Regulatory *Changes, but Could Strengthen Linkages to Performance Goals*,[9] GAO recommended that OIRA work with the agencies to improve how retrospective reviews could be used to inform progress towards agency priority goals under the GPRA Modernization Act of 2010.[10] This included actions such as (1) identifying whether a regulation contributes to an agency priority goal as one criterion for prioritizing reviews, and (2) by including in the scope of retrospective reviews the regulations that

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[8] *OECD Regulatory Policy Outlook 2015* (The Organization for Economic Co-operation and Development, 2015) available at http://www.oecd.org/governance/regulatory-policy/oecd-regulatory-policy-outlook-2015-9789264238770-en.htm.
[9] GAO-14-268
[10] GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (Jan. 4, 2011).

collectively contribute to an agency priority goal. What actions has your agency taken to better align retrospective reviews with GPRAMA agency priority goals?

RESPONSE: The EPA established an Agency Priority Goal related to burden reduction of 1 million hours by the end of fiscal 2015. The EPA has achieved this goal, in part through work on actions identified in the agency's retrospective review plan under E.O. 13563.

On Planning for Review

14. OMB Memorandum M-11-19 directed agencies to design and write future regulations in ways that facilitate evaluation of their consequences and thus promote retrospective analyses. ACUS recommendation 2014-5 suggested that agencies, when appropriate, establish a framework for reassessing the regulation in the future and should consider including portions of the framework in the rule's preamble. On November 3, 2015, the GW Regulatory Studies Center issued *Learning from Experience: Retrospective Review of Regulations in 2014*[11], which reviewed 22 significant and economically significant rules and found that none of them included a plan to conduct retrospective review of the rule after implementation. How has your agency responded to that OIRA directive and what have you learned through those efforts?

    k. What actions does your agency plan to take to ensure that planning for future reviews is part of the procedures for drafting new regulations?

    RESPONSE: Through its focus on Next Generation Compliance,[12] the EPA has demonstrated its commitment to issuing regulations that are as effective and efficient as they can be in achieving their intended benefits. The EPA is committed to writing rules that are designed to promote compliance and to facilitate retrospective review, in part by collecting appropriate data that can be used by the agency, the regulated community, state and local governments, and the public to facilitate implementation, measure, and verify environmental results. Our Next Generation Compliance effort has a variety of components including efforts to design regulations and permits that are easier to implement, with a goal of improved compliance and environmental outcomes; to use and promote advanced emissions/pollutant detection technology so that regulated entities, the government, and the public can more easily see pollutant discharges, environmental conditions, and noncompliance; shift toward electronic reporting to help make environmental reporting more accurate, complete, and efficient while helping the EPA and co-regulators better manage information, improve effectiveness and transparency; and expand transparency by making information more accessible to the public.
    The public is also welcome to send additional suggestions for regulations that may be appropriate for review to ImprovingRegulations.SuggestionBox@epa.gov or through the docket associated with our retrospective review plan.[13]

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[11] Sofie E. Miller, *Learning From Experience: Retrospective Review of Regulations in 2014* (The George Washington University Regulatory Studies Center, Working Paper, 2015), *available at* http://regulatorystudies.columbian.gwu.edu/learning-experience-retrospective-review-regulations-2014.
[12] http://www.epa.gov/compliance/next-generation-compliance
[13] http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OA-2011-0156

15. The Department of Transportation (DOT) maintains a plan on its website to ensure that all regulations are reviewed every ten years. Each DOT agency divides its rules into 10 different groups, and analyzes one group each year. They request public comment on the timing of the reviews through the Regulatory Agenda (for example, if a particular rule should be reviewed earlier and why). Would something like this be viable at your agency?

    1. How do you ensure that cyclical reviews are apparent to your stakeholders to give them an opportunity to comment?

    RESPONSE: The EPA administers a variety of programs and rules based on a wide number of governing statutes. Approximately 60% of the rules on the EPA's Semiannual Regulatory Agenda are statutorily-required reviews of existing regulations. Nearly all of the actions included in the EPA's Retrospective Review Plan were added in addition to reviews required under statutes such as the CAA, SDWA, and RFA. The EPA's stakeholders are invited to participate in the EPA's rulemaking process by reviewing and sending feedback or suggestions on actions included in our Regulatory Agenda and our Retrospective Review Plan. Since 2011, the EPA has maintained an open comment docket and an e-mail address for public feedback on the existing *Plan for Periodic Retrospective Review of Existing Regulations* and the subsequent progress reports. In 2015 the EPA also issued another Federal Register notice soliciting comments on issues related to retrospective review. Any interested party may provide comment during the proposal phase of any given the agency rulemaking.

Reporting Outcomes of Retrospective Review

16. In the April 2014 GAO report *Reexamining Regulations: Agencies Often Made Regulatory Changes, but Could Strengthen Linkages to Performance Goals*,[14] GAO recommended that OIRA work with agencies to improve the reporting of retrospective review outcomes, including providing more comprehensive information about completed reviews. What actions has your agency taken to ensure that retrospective review reporting is more accessible and transparent?

    RESPONSE: The EPA provides information in two locations on its public Web site about the semiannual progress reports. Each semiannual report is posted on our Web site and contains a column entitled "status of initiative," so that users can locate actions that are new, newly completed, or ongoing.[15] The EPA also continues to maintain an open docket for feedback from the public on our retrospective review process or ongoing actions and we maintain communication through ImprovingRegulations.SuggestionBox@epa.gov, which was first provided in our 2011 *Final Plan for Periodic Retrospective Reviews of Existing Regulations*. The EPA indicated which actions in its Semiannual Regulatory Agenda are also retrospective review actions under E.O. 13563.

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[14] GAO-14-268

[15] http://www.epa.gov/laws-regulations/documents-retrospective-review

Post-Hearing Questions for the Record
Submitted to Mr. William Nickerson
From Senator Heidi Heitkamp

"Agency Progress in Retrospective Review of Existing Regulations"
November 5, 2015

1. A critical component of retrospective review is ensuring that the public has the opportunity to provide feedback on whether regulations are in fact achieving their intended objective. However, all too often we hear from the general public, small business, and other regulated entities, that they feel disconnected from the rulemaking process, or that their voices are not being heard.
   a. Could each of you address how your agencies engage the public and seek feedback outside of the general notices published in the Federal Register?
   b. Do you find that the Federal Register is still the most effective means of providing notice and receiving useful feedback to help identify public concerns?

   RESPONSE: Publishing notices in the Federal Register has been an effective mechanism for the EPA to provide information and solicit feedback from the public on retrospective review. The regulated community recognizes the Federal Register as a regular source for information on the EPA actions as well as a portal for communicating thoughts and suggestions with the agency. The EPA has published three notices requesting input pertaining to retrospective review which resulted in over 1,400 suggestions, many of which helped guide our selection of actions for review.

   Beyond use of the Federal Register, the EPA also uses other methods to engage the public on retrospective review. One of the agency's most important assets is the relationship program and regional offices have with key stakeholders. The EPA managers and staff are in frequent contact with the regulated community before, during and following the development of agency rules. The EPA also utilizes formal meetings, both virtual and in-person to solicit feedback on retrospective reviews. In 2011, the EPA conducted twenty public meetings and town halls as well as a number of Web based dialogues related to retrospective review. More recently, the agency has reached out to small businesses, the SBA's Office of Advocacy, trade associations, as well as state and local officials to meet and obtain their suggestions for retrospective review.

   Additionally, the EPA has maintained an open docket and dedicated email for the public to provide input. Regardless of how the EPA receives feedback, specific suggestions regarding how rules could be modified along with data or other detailed information that supports the request is most useful to the agency. While public meetings may sometimes reach a slightly different audience than do Federal Register notices, in our experience, the feedback from public meetings tends to be more general than feedback received in writing.

2. When examining retrospective review, we often discuss cost benefit analysis to determine whether or not a rule is achieving its stated objective. However, part of this information collection requires the solicitation of data from regulated entities.

a. Do you find that current retrospective reviews are stymied by the strict requirements of the Paperwork Reduction Act?
b. Would we see an increased effectiveness of the retrospective review process if we were to exempt retrospective review activities from the Paperwork Reduction Act?

RESPONSE: The Paperwork Reduction Act does mandate that the EPA meet certain requirements before collecting information from the public. The EPA is often limited to publicly available, industry-level data when assessing costs of existing rules. In theory, access to facility-level data could prove useful in assessing costs and benefits, however, there would still be additional challenges to developing detailed cost estimates of regulatory actions. Acquiring detailed cost information would place additional paperwork burden on regulated entities. It also can be challenging to separate regulatory compliance costs at the firm level from unrelated costs that were incurred at the same time. In general, the Paperwork Reduction Act has not proved a barrier to the EPA's retrospective review program.

3. During our subcommittee's maiden hearing, we invited witness from diverse backgrounds to discuss the Federal government's regulatory framework. I took the opportunity to discuss retrospective review with that panel as well. One thing I heard from both witnesses was that there needs to be a dedicated funding stream in support of retrospective review activities.
   a. Based on current expectations of the President, as outlined in Executive Order 13563, are resources being dedicated to retrospective review at the detriment of the mission objectives of the agency?
   b. What resources do your agencies need to effectively and efficiently carry out retrospective review while maintaining overall operational awareness?

RESPONSE: Roughly 60% of the rules on the EPA's Regulatory Agenda are retrospective reviews required by various statutes, so considerable resources are already being spent on this effort. The agency's current level of resources can support our obligations under existing statutes and our current efforts to respond to E.O. 13563.

4. In a previous hearing, Mr. Neil Eisner, a Senior Fellow at the Administrative Conference of the United States, advocated strengthening the culture of review within the Federal agencies. In his opinion there is a focus, especially among senior officials, on creating something new rather than fixing something old.
   a. What actions are taken within each of your agencies to ensure that the workforce buys into the reality that ensuring the effectiveness of existing regulations is just as important as ensuring new rulemaking is of the highest caliber?

RESPONSE: The workforce and senior officials are responsive to stakeholder concerns and feedback on both retrospective reviews and new actions. The EPA is interested in addressing situations where the expected human health and environmental benefits associated with one of our actions are not being realized, in addition to developing new mechanisms to protect human health and the environment. A significant portion of the actions in the EPA's Regulatory Agenda already are retrospective reviews. Further, ensuring rules are effective is a high priority among senior officials at the EPA.

5. Understanding that good retrospective review often require examination of highly technical subject matter, it is important that agencies have a highly skilled and specialized work force to conduct retrospective reviews in an effective manner.
    a. Having completed a number of retrospective reviews up to this point, what are some the challenges you have found as it relate to workforce, in completing retrospective review effectively?
    b. Do you think the Federal Governments could do more to able to attract
    c. Do you have dedicated staff focused on reviewing existing rules?

RESPONSE: The EPA workforce is already experienced doing retrospective reviews because they are built into many of our core statutory responsibilities. Approximately 60% of the actions on the EPA's Regulatory Agenda are retrospective reviews required by various statutes. For this reason, and because it is often beneficial to have staff who are familiar with the underlying action since those staff have relevant knowledge, skills and experience, we do not have separate, dedicated staff working solely on retrospective review. In addition, through recent efforts to promote Next Generation Compliance, the agency has provided rule writing staff with additional training and resources to design rules that are easier to implement, with a goal of improved compliance and environmental outcomes.

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