

U.S. Department of Agriculture

*Preliminary Plan for Retrospective Analysis*

*Pursuant to Executive Order 13563*

May 18, 2011

I. Executive Summary of Preliminary Plan and Compliance with Executive Order 13563

Executive Order (E.O.) 13563 recognizes the importance of maintaining a culture of retrospective analysis throughout the Executive Branch. Even the most rigorous pre-rulemaking analysis cannot anticipate every consequence that a rule will have, including every cost and benefit. Similarly, it is impossible to anticipate every change that will come with time, and consequently, it is necessary to reevaluate rules and related information collections in light of new experience, technology, and information.

The U.S. Department of Agriculture's (USDA) preliminary plan for retrospective analysis is designed to improve the culture of retrospective analysis and develop a schedule for identifying certain significant rules and information collections that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive.

USDA's initial review and analysis will focus on areas related to the public's access to critical USDA programs, particularly those programs where access could be simplified and the reporting burdens reduced. The intent is to minimize burdens on individuals, businesses and communities attempting to access programs that promote economic growth, create jobs, and protect the health and safety of the American people. USDA has invited the public to participate through the publication of a Request for Information (RFI) in the Federal Register (see link below). In addition to the RFI, USDA will employ its Open Government Web site (see link below) to give the public an additional, ongoing forum to provide input and discussion into the retrospective analysis of regulations, and to help USDA formulate plans for periodic future reviews.

USDA is also updating its internal departmental regulation that guides the regulatory development, clearance procedures, and review of existing regulations within USDA to incorporate the principles of E.O. 13563. For example, USDA will use the development of the Department's annual Statement of Regulatory Priorities to identify which regulations will be subject to retrospective analysis during the year. Further, Departmental procedures will also be updated to ensure that supporting data and analyses be made available whenever possible on USDA's Open Government Web site.

II. Scope of Plan

(a) USDA is focusing its initial retrospective review under E.O. 13563 in the following mission areas and agencies: Rural Development (RD), Risk Management Agency (RMA), Farm Service Agency (FSA), Natural Resources Conservation Service (NRCS), the Food Safety and Inspection Service (FSIS), the Forest Service (FS), and the Animal and Plant Health Inspection Service (APHIS). The focus of USDA's initial

review will be to simplify and reduce the reporting burden on the public for entry and access to USDA programs, while simultaneously reducing its administrative and operating costs by sharing similar data across participating agencies.

(b) While USDA is focusing its initial review on the areas identified above, USDA is accepting comments from the public on any of its regulations and ways to improve them to help USDA's agencies advance the mission of USDA consistent with the Executive Order.

### III. Current Actions to Implement E.O. 13563

(a) On Tuesday, April 19, 2011, USDA issued a News Release announcing its regulatory review efforts under E.O. 13563, including an RFI published in the Federal Register. In the News Release, the Secretary of Agriculture stated:

“As we work to out-build and out-innovate the rest of the world, we must ensure that people across the country are able to access the critical programs and resources that USDA has to offer...This comment period will allow us to hear directly from those who utilize USDA programs as we work to streamline them in a way that improves access to resources intended to create jobs and grow the economy.”

The News Release is available here:

<http://www.usda.gov/wps/portal/usda/usdahome?contentid=2011/04/0168.xml&contentidonly=true>

(b) USDA published the RFI in the Federal Register on Wednesday, April 20, 2011, (76 FR 22058-22059), which can be accessed online at the following address:

<http://www.regulations.gov/#!documentDetail;D=USDA-2011-0001-0001>

(c) In addition to soliciting public comments through Regulations.gov, USDA is inviting the public to participate in analyzing its existing significant regulations through its Open.gov Web site.

The USDA Open.gov site includes the following invitation to the public:

“We're seeking your input as we review existing program rules to determine whether any should be modified, streamlined, clarified, or repealed in order to improve access to USDA programs in support of President Obama's Executive Order to simplify and improve federal regulations.”

The USDA Open.gov site can be accessed here:

<http://www.usda.gov/open/Blog.nsf/dx/04192011075634AMIDEH7E.htm>

(c) Response to the RFI:

As of May 20, 2011, USDA received over 2,100 comments in response to the RFI. Comments were received from a broad range of stakeholders, including individuals, regulated entities, trade groups, and

USDA employees. Comments were submitted electronically on Regulations.gov, by e-mail and in writing.

The vast majority of comments referenced USDA's potential review of process improvements that could be achieved through the consolidation of information required to participate in farm programs administered by the Farm Service Agency and the Federal Crop Insurance Program, identified as the Acreage-Crop Reporting Streamlining Initiative (ACRSI). Many of these comments responded to suggestions from various commenters that the Farm Service Agency (FSA) take over delivery of the Federal crop insurance program or other administrative functions of the Natural Resources Conservation Service (NRCS) and the Risk Management Agency (RMA). ACRSI is an initiative aimed at reducing the reporting burden on USDA customers. By consolidating acreage reporting dates, linking crop codes, and sharing producer information across agencies producers will be able to provide acreage data at their first point of contact with USDA whether that be with FSA, NRCS, or their private sector crop insurance agent. Each individual agency will still be required to collect information from producers that is specific to their program(s); however, common information will only need to be collected once. This initiative will minimize the paperwork burden on producers and minimize the number of trips they need to make to a USDA office.

USDA also received a number of comments concerning other programs within USDA. Several commenters suggested that FSIS carefully review its regulations to determine whether requirements for labeling import inspection, ensuring fair trade, approval of new technologies, collection and use of epidemiological data, and adulteration decisions are relevant to current food production processes and can be eliminated or reduced. In addition, commenters suggested that the Agricultural Marketing Service (AMS) streamline the implementation of Country of Origin Labeling and procedures for purchasing commodities for nutrition assistance programs. For Rural Development, commenters suggested ways to streamline application procedures for its energy and housing programs.

All comments received in response to the RFI will be evaluated and taken into account when developing the final plan for USDA.

#### IV. Current Agency Efforts for Retrospective Analysis

The programs of USDA are diverse and far reaching, as are the regulations that attend their delivery. These regulations range from nutrition standards for the school lunch program, to natural resource and environmental measures governing national forest usage and soil conservation, to emergency producer assistance as a result of natural disasters, to regulations protecting American agriculture from the ravages of plant or animal pestilence, and they extend from farm to supermarket to ensure the safety, quality, and availability of the Nation's food supply. Regulations also codify how USDA conducts its business, including the specifics of access to, and eligibility for, USDA programs. Regulations also specify the responsibilities of State and local governments, private industry, businesses, and individuals that are necessary to comply with their provisions.

Many regulations function in a dynamic environment, which requires their periodic modification. For instance, periodic changes in legislative authority require significant analysis and rulemaking. In

addition, the factors determining various entitlements, eligibility, and administrative criteria often change from year to year. Furthermore, the problems that are being addressed 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. In addition, estimates supporting prospective regulatory analyses may contain erroneous assumptions, producing inaccurate predictions that can be corrected with new data and analytical methods. Therefore, many significant regulations must be revised annually to reflect changes in economic and market benchmarks. Through its regulatory decision making process, USDA routinely identifies regulations for retrospective analyses as a result of legislative reauthorizations, Section 610 reviews of the Regulatory Flexibility Act, and periodic regulatory reviews as reflected in the Unified Regulatory Agenda.

#### (a) Legislative Reauthorization

Almost all legislation that affects USDA programs has accompanying regulations. USDA uses the legislative cycle as an opportunity both to identify needed statutory revisions and to review the implementation of its regulations. Examples of major program reauthorizations include:

- (1) The Food, Conservation and Energy Act of 2008 (2008 Farm Bill). This act contains 15 titles and over 600 sections affecting every mission area of USDA. Over 160 regulatory actions have been undertaken for major programs covering domestic commodity support, crop insurance, conservation, export and foreign food assistance, bioenergy, rural development, agricultural research, marketing, animal and plant health, food safety, and food and nutrition programs. The 2008 Farm Bill provided USDA critical tools for ensuring that rural America has the means to remain viable and provide opportunities for their residents to remain in their communities. The following small number of examples indicates how existing programs were amended and new programs created to help address the challenges facing rural America.
  - Supplemental Nutrition Assistance Program (SNAP): FNS is proposing to allow additional administrative options for States to use telephone interviews and telephonic and electronic signatures in certifying clients for the SNAP program. The proposed change, which has been authorized by USDA in many States under the Act's waiver authority, would be codified in the SNAP regulations at 7 CFR § 273. When finalized, it will permit households to fulfill the interview requirement without the need to visit the local SNAP office, reducing transportation costs and potential loss of wages for households, and reducing burden for State SNAP agencies that administer the program. Reduction in burden for SNAP applicant households of about 20.7 million hours.
  - Streambank Restoration Projects: USDA and the Environmental Protection Agency (EPA) have supported development of credible accounting standards that quantify the benefits of restoration projects. This information can be used with software developed by the Freshwater Trust, called "StreamBank," to streamline the permitting process for restoration projects across multiple Federal and state agency activities. The efficiencies gained through

streamlining reduces the cost of restoration projects, while increasing standardization. Tested in 28 projects over a two-year period, StreamBank cut project timelines by up to 70 percent. The rigor brought to restoration projects through StreamBank resulted in enough confidence to exempt them from state permitting in Oregon, and dramatically streamlined Federal permitting procedures.

- Broadband: For over seven decades, Rural Development has helped deploy electric, telecommunications, water, and wastewater service to small towns and rural communities across the country. Broadband is the newest addition to this portfolio and is a natural evolution of USDA's traditional infrastructure telecommunications program. The direct benefits of broadband to the rural economy are tangible and significant. Without broadband, rural areas will lag behind their metro counterparts. With it, rural areas have an unparalleled means to overcome challenges presented by distance and better take advantage of new economic opportunities. The 2002 Farm Bill established the first official broadband program and was amended in the 2008 Farm Bill. The changes made in the 2008 Farm Bill were the result of stakeholder input on regulations proposed to implement the 2002 Farm Bill. RD published new regulations for the broadband loan program on March 14, 2011. The new broadband loan regulation incorporates "lessons learned" under the Recovery Act's Broadband Initiatives Program, along with revisions intended to strengthen the program, increase efficiencies, and better target limited resources to unserved and underserved areas. The new regulations will allow RD to fill the gaps that persist in rural broadband access.
- Renewable Energy: The development of renewable energy is a critical component of our efforts to rebuild and revitalize rural America. The 2008 Farm Bill has been instrumental in increasing our energy independence and expanding new technologies and markets for agricultural and environmental waste material. The programs include the Biorefinery Assistance Program, the Repowering Assistance Program and the Bioenergy Program for Advanced Biofuels, and Renewable Energy Assistance Program. Implementation of the 2008 Farm Bill contributes to USDA's efforts to revitalize the rural economy and meet the Nation's energy challenges. These renewable energy programs provide new sources of farm income, increase domestic energy production and develop a domestic renewable energy industry which will create jobs and reduce America's dependence on imported oil. These investments benefit all of America because renewable energy provides the opportunity for a cleaner environment and greater energy security for our country.
- Value Added Producer Grants (VAPG): The primary objective of this grant program is to help agricultural producers develop strategies to create marketing opportunities and to help develop Business Plans for viable marketing opportunities regarding production of bio-based products from agricultural commodities. As with all value-added efforts, generating new products, creating expanded marketing opportunities, and increasing producer income are the end goal. VAPG was authorized in FY 2000 by the Agriculture Risk Protection Act. The

2008 Farm Bill amended to the program to provide additional opportunities for beginning and socially disadvantaged farmers. The changes also assist a broad range of agricultural producers. Improvements made to program will create additional economic and job opportunities by helping owners of small and medium-sized family farms sell their products in local and regional markets, part of our drive to win the future.

- Cooperative Interstate Inspection: Another example is a rule that establishes a new voluntary cooperative program under which State-inspected meat and poultry establishments with 25 or fewer employees will be eligible to ship meat and poultry products in interstate commerce. FSIS engaged in notice-and-comment rulemaking and held two public meetings via teleconference to solicit public input on the program. The final rule allows State-inspected establishments located in participating States to be selected to participate in the new cooperative interstate shipment program and to ship and sell their meat and poultry products in interstate and foreign commerce. The rule will benefit these establishments by opening new markets for their products, which will help expand rural development and jobs, and increase local tax bases, strengthening the stability of rural communities where many of these establishments are located. This will also benefit small farmers and local livestock and poultry producers by providing them with access to processing plants that can sell meat and poultry products across State lines. Further, this rule will benefit consumers by generating more product choices, as more products can be shipped to new markets.
- Animal Health Protection: Under authorities amended by the 2002 Farm Bill, the Animal and Plant Health Inspection Service (APHIS) is testing innovative technology that allows officials, including APHIS, State, or Accredited Veterinarians, to wave a wand in front of an animal and read the animal's identification number instead of the current method of individually stopping a cow, for example, and manually writing the cow's 16-digit identification number on a piece of paper in which numbers can easily be missed or transposed. Once the animal has been scanned, the official can perform a test or a few tests on the animal. The device can record the test results, print labels with all necessary information for test tubes to be submitted to a lab, and can file and store all of that information by animal, by herd, by owner, by State, by official, etc. If samples were submitted to a lab using the device, the lab can transmit the test results to the appropriate official to take immediate action. This reduces the amount of time spent waiting for results and the cost of mailing or transporting the results from the lab to the official. With most disease programs, animals have to be tested more than once, these devices can remember the animal by pulling that animal's history; it can also detect if an animal is missing from a herd or flock and which animal. In addition to many APHIS employees, Michigan, New Mexico, Minnesota, and California have been testing the devices and the system. California tested the device on approximately 400,000 animals during one investigation. The estimated reduction in burden hours for program participants is roughly 136,400 hours,

including 128,412 hours for business –mostly small business and 7,979 hours for State, Local, and Tribal Governments.

APHIS has also implemented a system for ePermits, which is a web-based system participants can use to apply for a permit online, check the status of an application, view issued permits or other responses and more. ePermits enables Federal regulatory officials to issue, track, and rapidly verify the validity of import permits, thus reducing data-entry, processing, and delivery time and expense. The estimated reduction in burden hours for program participants is roughly 9,700 hours.

(2) The Child Nutrition and WIC Reauthorization Act of 2004. This Act resulted in a number of important actions, including the following:

- Requiring local educational agencies to conduct direct certification in conjunction with the Supplemental Nutrition Assistance Program (SNAP). Under the direct certification process, a local educational agency obtains documentation of a child's receipt of SNAP benefits from the State or local program office. This change will be codified in regulation this year at 7 CFR § 245. By eliminating the need for paper applications for millions of low-income children, direct certification can[] substantially reduce paperwork burden and simplify program access. The estimated reduction in burden hours for program participants is roughly 113,000 hours per year.
- The Act also provided for WIC demonstration projects to evaluate the use of fresh, frozen, and canned fruits and vegetables in the Program. This helped pave the way for the first major revision of WIC food packages, implemented by rule on October 1, 2009. For the first time, most WIC recipients are receiving fruit and vegetables with WIC benefits, highlighting the importance of increased consumption.

(3) Healthy, Hunger-Free Kids Act of 2010. Pursuant to the requirements of the Healthy, Hunger-Free Kids Act, the Food and Nutrition Service (FNS) recently published a proposed rule to update and raise nutrition standards for the first time in fifteen years. The changes to school meals will help improve the health and nutrition of over 50 million children enrolled in program schools, an average of which nearly 32 million eat a school lunch on a typical school day. The changes would add more fruits, vegetables, whole grains, fat-free and low-fat milk to school meals. Reimbursable Program meals would also be required to limit the levels of saturated fat, sodium, calories, and trans fats in meals. The changes are based on scientific recommendations by the National Academies' Institute of Medicine (IOM) in their report, School Meals: Building Blocks for Healthy Children. The Healthy, Hunger-Free Kids Act also provides schools and communities new tools to meet the challenge of providing food that is more nutritious. Additional reimbursement will be available for lunches that meet the enhanced nutritional requirements. Rules will be issued to strengthen the nutritional density of all foods available to school children during the school day. Other rules mandated by the Act will strengthen the revenue streams

that support balanced, reimbursable meals so that attractive, tasty, more nutritional meals can be provided at every school. In addition, technical assistance and increased flexibility will be provided under the Act, and USDA will work with schools and communities to help improve meals so that they are consistent with the Dietary Guidelines for Americans. Implementing these rules is the next step in raising a healthier generation of kids; and the rules will set in motion in earnest the hard work necessary by the entire host of partners that will raise the bar for our America's school children.

#### (b) Periodic Regulatory Reviews

Reducing regulatory burden on the American people and our trading partners is a priority for USDA. USDA is working to revise or repeal regulations that are unnecessary as a result of changed circumstances, or are duplicative or inappropriately burdensome. USDA will work to ensure that all regulations are consistent with current regulatory priorities and principles and to otherwise improve the effectiveness of existing regulations.

USDA has an internal Departmental Regulation (DR-1512) that establishes a process for the development and review of all regulatory actions within USDA consistent with the requirements of E.O. 12866, which will be amended to meet the requirements announced in E.O. 13563. It covers the full rulemaking cycle, starting when the need for a regulatory action is first identified, and carries through drafting, technical, legal, policy, and external review, preliminary publication in the Federal Register, receipt of public comment, and final publication for inclusion in the Code of Federal Regulations. DR-1512 ensures that USDA regulatory actions foster economic growth; respect the role of State, local, and tribal governments; and do not impose unreasonable costs on society.

In addition, Section 610 of the Regulatory Flexibility Act requires agencies to review all regulations that have a significant economic impact on a substantial number of small entities within 10 years of their adoption as final rules. If a Section 610 review reveals that a regulation is in need of revision or rescission, the agency initiates a rulemaking action, consistent with the requirements of DR-1512. For example, AMS is undertaking a Section 610 review of its National Organic Program regulations. A Federal Register Notice was published on February 25, 2011, soliciting public comment by April 26, 2011. USDA's FSIS will also undertake Section 610 reviews on regulations pertaining to the Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle and Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems.

Consequently, USDA agencies review existing regulations on an ongoing basis. If regulations are found to need revision or rescissions, agencies initiate rulemaking actions, including the preparation of regulatory impact analyses, given agency priorities and resources. The results of these reviews are reflected in the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda), published every spring and fall. The Agenda provides uniform reporting of data on regulatory and deregulatory activities under development by agencies within USDA in conformance with E.O. 12866 *Regulatory Planning and Review*. Through the agenda, USDA notifies the public about planned



regulations and regulatory reviews pending at the time of publication except for minor and routine repetitive actions.

In USDA's fall 2010 Agenda, 287 total rules were listed. Of this total, 33 were identified as regulatory reviews under Section 610 of the Regulatory Flexibility Act meaning that 11% of the total USDA rules listed in the Agenda were reviews of existing regulations. Several factors are considered when reviewing regulations, including:

1. The continued need for the regulation;
2. The nature of comments or petitions received concerning the regulation from the public;
3. The complexity of the regulation;
4. The extent to which the regulation overlaps, duplicates, or conflicts with other Federal regulations, and, to the extent feasible, with State and local government regulations;
5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the areas affected by the regulation; and
6. The extent to which there is opportunity to reduce governmental or nongovernmental burdens while still achieving statutory objectives and requirements; and any other factors which are deemed appropriate.

#### (d) Current Stakeholder and Customer Outreach Activities

On a regular basis, USDA agencies seek direct input from stakeholders and employees to determine which rules require modification. Some examples of recent efforts include:

##### *Rural Development*

In 2009 USDA's RD mission area asked its 6,000 employees in over 500 nationwide offices how to improve RD's regulations, forms, and processes. Those suggestions were received by Rural Development's Undersecretary's office, Administrators, and Deputy Administrators.

Moreover, in late 2009 and early 2010, RD and FSA hosted a series of "Jobs Forums" in nearly every state, with many states hosting multiple forums. These forums focused on how to create jobs and economic opportunities. Each of the forums is captured in a report outlining the stakeholders' comments and suggestions, many of which targeted USDA's regulations. The comments have assisted RD in rulemaking and will be important in determining USDA's future regulatory actions and process improvements. Specifically, RHS plans to use the responses to develop regulation modifications for Community Facilities regulations and environmental regulations. An example summary report of the Jobs Forum is available here: [http://www.rurdev.usda.gov/ne/job\\_forum.htm](http://www.rurdev.usda.gov/ne/job_forum.htm).

RD also engaged in dozens of tribal consultations as it works to implement the Substantially Underserved Trust Area ("SUTA") provisions contained in the 2008 Farm Bill. SUTA directs USDA to increase participation in RD programs by tribal governments and communities, including residents of Hawaiian homelands, Alaskan Natives, and Pacific Islanders, and it applies to all Rural Utilities Service (RUS) Programs, including Electric, Telecommunications and Broadband, and Water and Waste Disposal Programs. Consultation on the SUTA provisions will assist RUS' relationship with federally recognized

tribes while bolstering USDA's response to the November 5, 2009, Presidential Memorandum on Tribal Consultation, that stated tribal consultation is "a critical ingredient of a sound and productive Federal-tribal relationship."

These three exercises provided a base for the comprehensive regulatory review process now underway. Comments received for all three consultation efforts, identified areas of the regulations that were burdensome for applicants and employees. The agencies have utilized the information gathered to focus initial regulation revision efforts on the most beneficial sections.

Further, all three agencies in the RD Mission Area have been engaging in streamlining business processes ranging from full-blown business process re-engineering in RUS' Electric Programs to simplifying internal staff instructions related to environmental reviews.

#### *Food Safety and Inspection Service*

FSIS' outreach efforts include a variety of activities. Through outreach and exchange of perspectives, FSIS is able to identify flexible regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public, and particularly for small entities, in line with the objectives of E.O. 13563. These efforts include providing assistance to small plant operators, small producers, international trading partners, and others, via phone and email, with plain-language guidance on regulatory and other matters. FSIS values feedback reported to its Help Desk and other outreach personnel at public events by small plant operators, state meat and poultry inspection (MPI) programs, and others.

As part of the USDA "Know Your Farmer, Know Your Food" effort to create new economic opportunities by better connecting consumers with local producers, FSIS worked with small and medium processors to reduce the complexity of regulations for approving mobile slaughter units under Federal regulations. A mobile slaughter unit is a self-contained slaughter facility that can travel from site to site. These units can help producers meet consumer demand for locally grown and specialty products and can serve multiple small producers in areas where slaughter services might be unaffordable or otherwise unavailable. In general, approval of a mobile slaughter facility required a great deal of stakeholder involvement, creative thinking, and problem solving, because the Federal regulations are based on fixed slaughter facilities. Traditionally, animals intended for sale as food have been transported to an inspected facility for slaughter and processing. For livestock producers in rural areas throughout the country, they were finding it difficult, even cost prohibitive, to transport their livestock long distances to the closest inspected slaughter facility. As a result, regulations based on a fixed location were proving to be a barrier to many small processors from servicing the needs of small producers. In response to these concerns, FSIS engaged its stakeholders to develop guidelines providing solutions to the unique concerns that may arise with mobile slaughter units. Under the new guidelines developed by FSIS, small processors can more easily take advantages of mobile slaughter, which include lower processing costs, reduced stress on animals, lower capital investment, and less resistance from municipalities and neighbors. USDA outreach efforts included:

1. Organized two internet-based conferences, for regulations related to red meat (181 attendees) and poultry (150 attendees), both currently available online and on DVD; and
2. Organized and hosted mobile slaughter unit information sessions in Boonsboro, MD for 90 participants, in Carson City, NV for 60 participants, in Ft. Collins, CO for 150 participants, and is considering provision of additional sessions.
3. Worked with producer cooperatives and other producer groups to identify loan and grant programs within Rural Development (RD) that could provide funding for mobile slaughter units. RD also provided educational materials and technical assistance to producer groups to assist them in developing feasible business plans and participated with FSIS in outreach events.

V. Elements of Preliminary Plan/Compliance with E.O. 13563

(a) Criteria for Determining Candidates for Retrospective Analysis: The initial focus of USDA's E.O. 13563 retrospective analysis will be on removing barriers to access and improving public participation in USDA programs. In order to identify candidates for analysis, USDA has considered the following factors, in addition to the ones identified above, and processes in setting priorities:

1. Urgency for improving customer service by means of simplification, streamlining, or improved quality for information collection procedures;
2. Comments from stakeholders;
3. Resource capacity and potential approval process timelines; and
4. Likelihood of statutory change.

(b) Initial List of Candidates for Retrospective Analysis: Applying the criteria identified above, USDA determined that the following list of programs and activities should be evaluated for review over the next two years:

1. Rural Development: To better serve its customers, RD is reviewing its regulations to determine which application procedures for Business Programs, Community Facilities Programs, Energy Programs, and Water and Environmental Programs can be streamlined and requirements synchronized. RD is approaching this exercise from the perspective of the people it serves, specifically by communicating with stakeholders on two common areas of regulation that would provide the basis of reform. Programs that are focused on a similar applicant base, such as non-profit, Native American Tribes, and public bodies such as Community Facilities and Water and Environmental Programs will make an effort to have similar requirements. To the extent practicable, each reform effort will consist of a common application and uniform documentation requirements making it easier for constituency groups to apply for multiple programs. In addition, there will be associated regulations for each program that will contain information specific to each program. The first area would provide support for entrepreneurship and business innovation. This effort would, for example, provide for the streamlining and reformulating of the Business & Industry Loan Guarantee Program and the Intermediary Relending Program; the first such overhauls in over 20 years. The second area would provide for streamlining programs being made available to municipalities, tribes, and non-profit organizations, specifically Water and Waste Disposal; Community Facilities; and Rural Business

Enterprise Grants plus programs such as Electric and Telecommunications loans that provide basic community needs. This regulatory reform initiative has the potential to reduce the burden to respondents (lenders and borrowers) by as much as 25 percent.

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arm and Foreign Agricultural Services: The Farm and Foreign Agricultural Services (FFAS) mission area will reduce burdens on program participants through the consolidation of information collection requests required to participate in farm programs administered by FSA and the Federal Crop Insurance Program administered by RMA. FFAS will evaluate methods to simplify and standardize, to the extent practical, acreage reporting processes, program dates, and data definitions across the various USDA programs and agencies. FFAS will allow producers to use information from their farm-management and precision-ag systems for reporting production, planted and harvested acreage, and other key information needed to participate in USDA programs. FFAS will also streamline the collection of producer information by FSA and RMA with the agricultural production information collected by the National Agricultural Statistics Service. These process changes will allow for program data that is common across agencies to be collected once and utilized or redistributed to agency programs in which the producer chooses to participate. Consideration is being given to creating a single Web site for producers to report commodity information if they so choose, or access their previously reported information.

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atural Resources Conservation Service: NRCS will improve the delivery of technical and financial assistance. NRCS plans to simplify the customers' participation in NRCS' technical and financial assistance programs, streamline the delivery and timeliness of conservation assistance to clients, and enhance the technical quality of NRCS' conservation planning and services. The streamlining initiatives 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 to work with NRCS in different ways. NRCS estimates that this initiative has the potential to reduce the amount of time required for producers to participate in USDA's conservation programs by almost 800,000 hours annually. This includes efficiencies from reduced paperwork, data entry by the client, and reduced travel time to and from the local office to complete forms and other administrative tasks. Improvements being considered include:

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roviding an online portal that will provide customers a 24/7 ability to apply for programs or services, review their plans and contracts, view and assess natural resource information specifically about their farm, evaluate the costs and benefits for various conservation treatment alternatives, notify NRCS of installed practices, and check on contract payments;

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educing the number of office visits required through the use of mobile technologies that will enable clients to view, finalize, and electronically sign documents on-site rather than at a local office;

- Providing clients with more timely and specific information on alternative conservation treatments, including the environmental benefits of their planned and applied practices; P
- Accelerating payments to clients; and A
- Simplifying conservation plan documents to more specifically address client needs and goals. S

NRCS will also focus on promoting environmental stewardship in the agricultural industry. In conjunction with several States and other partners, USDA is teaming with the Environmental Protection Agency (EPA) to explore “certainty” mechanisms that encourage farmers to implement voluntary practices that reduce impacts on water quality in exchange for regulatory certainty for their operations. In particular, if farmers’ voluntary actions result in quantifiable and verifiable improvements in water quality and resource conservation, EPA and USDA are working with States to develop programs that can provide assurances that the farmers’ actions are consistent with State plans to improve water quality. EPA and USDA’s efforts are intended to allow states flexibility to increase farmers’ and other landowners’ interest and willingness to adopt the most effective land stewardship practices by providing incentives that increase the pace and extent to which resource conservation and verifiable water quality improvements are achieved.

4. Food Safety and Inspection Service: FSIS will review its regulations to identify improvements in information collection procedures to improve the quality and sufficiency of data available to inform and support regulatory decision making. Specific collections that could be improved include establishment information on products, processes, and volume, with linkages of testing results to products and processes. FSIS will implement measures to decrease the recordkeeping burden on industry, by possibly reducing requirements for meat, poultry, and egg product labels to be submitted for approval before they may be used. In addition, FSIS is also considering how its new Public Health Information System (PHIS) could potentially be used to share data and reduce data reporting requirements. PHIS has four components: domestic inspection, import activities, export activities, and predictive analytics. The PHIS will allow FSIS to adjust domestic and import inspections and sampling based on trends. The PHIS will also enhance FSIS’ ability to find relationships between Salmonella test results and inspection findings and will allow FSIS to notify field and headquarters personnel about potential public health threats. Finally, the PHIS will improve FSIS’ ability to systematically verify the effectiveness of foreign food safety systems. PHIS will enable greater exchange of information between FSIS and other Federal agencies (such as U. S. Customs and Border Protection) involved in tracking cross-border movement of import and export shipments of meat, poultry, and processed egg products. F

5. Forest Service: Before beginning a management project, FS undertakes extensive environmental analyses under the National Environmental Policy Act (NEPA). These analyses ensure that FS F

fully considers the environmental implications of projects and examines a range of alternatives. NEPA compliance costs FS over \$350 million annually and the reviews entail significant time commitments. An average Environmental Impact Statement (EIS) can take over 1 ½ years to complete and an Environmental Assessment (EA) over 8 months.

The Natural Resources and Environment mission area and FS, in cooperation with the Council on Environmental Quality (CEQ), is considering a series of initiatives to improve and streamline the NEPA process as it applies to FS projects. Without jeopardizing environmental quality, these initiatives would distinguish between those projects that may have little or no adverse environmental impact (e.g. a tree planting or a stream restoration project), and those that have a significant impact (e.g. an open pit mining project). This initiative will build on recent actions taken by the Forest Service to experiment with reductions in the time needed to complete NEPA reviews. These include performing NEPA analyses on very large areas and then implementing individual projects within these areas under an umbrella NEPA document and modernizing the NEPA form and comment processing by using electronic storage and interfaces. Examples of potential new initiatives include:

- Proposed categorical exclusions for: (a) removing water control structures, (b) removing debris or sediment caused by natural disasters, (c) decommissioning roads. P
- Focused EA's where FS would endeavor to analyze projects within a 10-20 page document that is in compliance with NEPA. F
- Adaptive EIS' that evaluate a general problem in a more programmatic way which would allow the agency to tier-off the document to site-specific projects without the necessity of additional EA' or EIS'. A
- Agency engagement with stakeholders and other collaborators early in the NEPA process. A

6. Animal and Plant Health Inspection Service: The Animal and Plant Health Inspection Service (APHIS) will conduct a two-year, voluntary, pilot project to improve the approval process for genetically engineered organisms. Currently, the approval process is lengthy, in part because the environmental assessments required by the NEPA place large burdens of time and manpower on APHIS. APHIS hopes the pilot project will improve the quality and timeliness of the process, while also reducing the cost. APHIS will evaluate the feasibility of the two methods of using environmental documents prepared outside of APHIS to help meet NEPA requirements. In the first, APHIS would allow petitioners requesting approval of an organism to voluntarily submit the underlying environmental reports based upon which APHIS would develop an EA or EIS. Under the second mechanism, the EA and EIS would be prepared by a contractor, funded by a cooperative services agreement between the petitioner and APHIS. Under the contractor-prepared EA or EIS mechanism, petitioners will provide funds for the environmental analyses and documents, while APHIS will select and direct the contractor. In addition, with this mechanism, analyses and documents may be prepared for the entire NEPA process or only part

of the process. APHIS will independently evaluate all information and references in the environmental documents, supplement the information and analysis in the environmental reports as necessary, and make its own evaluation of the environmental issues and the adequacy of the analyses of those issues to ensure that the scope and content of the environmental analyses meet all NEPA requirements. The pilot will focus on petitions for non-regulated status and will not focus on permits or notifications.

(c) Organization and Structure: USDA Deputy Secretary, Kathleen Merrigan, will oversee the retrospective review team, comprised of mission area and agency-level regulatory review coordinators and work groups, who will be responsible for implementing the plan. Email: [reg.review@obpa.usda.gov](mailto:reg.review@obpa.usda.gov).

(d) Regulatory Decision Making Procedures: USDA will update its DR-1512 for Regulatory Decision Making Requirements to incorporate the principles of E.O. 13563. Consistent with E.O. 13563, DR-1512 establishes USDA's regulatory requirements and clearance process, including the retrospective analysis of existing significant regulations and regulations having a significant economic impact upon a substantial number of small entities under the Regulatory Flexibility Act.

As part of USDA's efforts to improve retrospective analysis, DR-1512 will be amended to more formally incorporate retrospective analysis into regulatory development procedures. Specifically, agencies will be required to identify regulations that will be subject to retrospective analysis as part of their regulatory planning efforts. As discussed above, DR-1512 identifies criteria that agencies should apply when identifying regulations that should be subject to retrospective analysis. These criteria were supplemented with additional criteria for developing the preliminary plan. USDA will review these criteria and will update them to reflect the principles of E.O. 13563. In particular, a new element for review could be the availability of any new information that would indicate that the foundation for the rule has changed. The public can play an important role in providing new information that could be used to reassess the effectiveness of a particular rule. Those regulations selected for retrospective review will be identified in the USDA Statement of Regulatory Priorities, which is published annually. Once a regulation is selected for review, the implementing agency will be required to seek public input on the regulation, and seek detailed data that can inform the retrospective analysis, and issue any findings as a result of the retrospective analysis.

USDA will supplement its regulatory review process by expanding opportunities for the public to provide input on which regulations should be subject to retrospective analysis. Public input will be accepted through the USDA Open.gov site. The USDA Open.gov site provides a new way for agencies to engage the public and to increase transparency and openness. Utilizing the Open.gov site will provide the public 24/7 access for identifying regulations that are outmoded, ineffective, insufficient, or excessively burdensome and should be modified, streamlined, or repealed. The public may also use the Open.gov site to identify those regulations that are effective and should be expanded.

Consistent with USDA's Open.gov plan and Section 2 of E.O. 13563, which directs agencies (to the extent feasible and permitted by law) to give the public timely online access to the rulemaking docket on

Regulations.gov, including relevant scientific and technical findings,” agencies will make more information available for public review. For proposed rules, agencies will provide additional opportunities for the public to comment on relevant scientific and technical findings. To implement this, USDA will revise DR-1512 to require agencies, to the extent feasible and permitted by law, to post scientific and technical findings documents associated with a rulemaking on Regulations.gov. These scientific and technical findings documents will be part of the rulemaking docket for public review and comment.

(e) Coordination with other Federal agencies: USDA will cooperate with other Federal agencies to coordinate actions in order to avoid duplicative or unnecessary rules and ensure compliance with international obligations. Examples of how select USDA agencies coordinate with other Federal agencies that have jurisdiction or similar interests:

1. Farm Service Agency: FSA coordinates closely with the Department of the Interior’s Fish and Wildlife Service (FWS), EPA, CEQ, as well as, USDA’s NRCS and FS on the development of conservation program regulations, the Conservation Reserve Program sign-up, and other conservation and environmental issues.
2. Rural Development: RD coordinates with the Departments of Housing and Urban Development, Energy, Commerce, and the Small Business Administration on the development of program regulations concerning single and multi-family housing, rural business development and entrepreneurial activities, and bio-energy development and utilization.
3. Natural Resources Conservation Service: NRCS chairs a State Technical Committee in each State through which other Federal agencies are able to coordinate efforts at the State and local levels. FWS has a Farm Bill Coordinator through whom NRCS coordinates its wildlife issues. There are regional coordination efforts through initiatives such as the Chesapeake Bay Watershed initiative, Great Lakes Restoration Initiative, and the Sage Grouse Initiative. At the national office, NRCS holds and attends meetings with its counterparts in FSA, FS, AMS, the Bureau of Indian Affairs, FWS, the U.S. Army Corps of Engineers, and EPA as conservation issues arise. These issues include but are not limited to: NRCS conservation technical assistance for other agency programs; forestry, wetland, wildlife, and water quality issues; organic production issues; and outreach to historically underserved producers. Additionally, NRCS worked closely with FWS and the National Marine Fisheries Service on changes to the Farm Bill regulations by providing advance opportunity for comment and dialogue on the regulations prior to publication. Further, NRCS worked cooperatively with the Bureau of Indian Affairs to negotiate and implement the new 30-Year Contract enrollment option in the Wetlands Reserve Program. NRCS also invites agencies that have specific expertise or jurisdiction by law over an action being proposed in a watershed plan to be a cooperating agency, including the U.S. Army Corps of Engineers and FWS.
4. Food Safety and Inspection Service: FSIS consults regularly with the Food and Drug Administration (FDA) concerning labeling and standards of identity regulations. For example,



before issuing any new regulatory standards of identity for meat or poultry products, FSIS consults with FDA to ensure there are no existing product standards established by FDA that would be inconsistent with standards established FSIS. FSIS also consults with AMS in the development of certain standards that may affect AMS purchase specifications. FSIS is currently consulting with both FDA and AMS to finalize regulations to update the U.S. poultry class standards to better reflect the characteristics of poultry being marketed today. FSIS also collaborates with FDA on nutrition labeling.

FSIS consults regularly with AMS concerning sampling and testing and certain labeling issues. On an annual basis, FSIS reviews and provides input concerning AMS' sampling requirements for microbial testing in AMS' purchase specifications for products used for the school lunch program. FSIS also worked with AMS to develop necessary FSIS regulations consistent with AMS's country of origin regulations. In 2009, FSIS, in consultation with AMS, issued an advance notice of proposed rulemaking on the use of the claim "natural" in the labeling of meat and poultry products. AMS and FSIS are carefully evaluating the comments submitted in response to the advance notice of proposed rulemaking and are collaborating to develop a proposal to achieve a consistent USDA approach to this issue.

FSIS, in close consultation with APHIS and FDA, established regulations to prevent potential human exposure to material that could potentially contain the bovine spongiform encephalopathy (BSE) agent. FSIS collaborates with APHIS and FDA on an ongoing basis to ensure that the measures implemented by the agencies remain effective in preventing the introduction and spread of the BSE agent in the United States.

FSIS also works through USDA's Foreign Agricultural Service to officially notify all proposed and final regulations to the World Trade Organization (WTO), which is an obligation of all WTO member countries as part of the Sanitary and Phytosanitary Agreement. This process informs international trading partners about proposed USDA regulations and provides the opportunity for comment. FSIS works cooperatively with the Office of the United States Trade Representative (USTR) to ensure that regulations implemented by the United States are consistent with our international rights and obligations.

5. Forest Service: FS coordinates, collaborates, and consults with several other resource agencies both informally and on a formal basis during the formulation of agency rules and internal policy. Discussions either in person or via electronic methods are the usual format. Often a Memorandum of Understanding may define the lead agency, as well as cooperating or supporting agencies. Legislation, agency impacts, or budget may also play a part in working with other agencies at USDA and other departments (i.e., DOI, FWS, DOE).
6. Animal and Plant Health Inspection Service: The Department of Homeland Security's U.S. Customs and Border Protection (CBP) conducts inspections at ports of entry to carry out and enforce APHIS' regulations. APHIS interacts closely and on a daily basis with CBP under a memorandum of agreement between the two agencies. Among other things, CBP is given an

opportunity to review all regulatory work plans and draft regulations that relate to activities involving CBP inspectors. APHIS coordinates biotechnology regulatory actions with FDA and EPA under a multi-agency coordinated framework. Activities include interagency meetings, some of which involve the Office of Science and Technology Policy, as well as sharing draft regulations. APHIS also communicates and shares draft regulations with other agencies as warranted by a particular regulatory action (USTR, FDA, and USDA's FSIS on BSE issues, for example).

## VI. Components of Retrospective Cost-Benefit Analysis

(a) The USDA rulemaking process currently includes a department-wide effort to reduce burden on participants and program administrators by focusing on improving program outcomes, and particularly on achieving the performance measures specified in the USDA's Strategic Plans (<http://www.ocfo.usda.gov/usdasp/sp2010/sp2010.pdf>).

In accordance with OMB Circular A-4--Regulatory Analysis, cost-benefit analysis (CBA) is the primary tool used for evaluating the impact of regulations. CBA is most effective when all benefits and costs can be quantified and expressed in monetary units. This provides a clear indication of the most efficient alternative. However, as noted in A-4, it is not always possible to express in monetary units all of the important benefits and costs. When it is not, the most efficient alternative will not necessarily be the one with the largest quantified and monetized net-benefit estimate. In such cases, agencies may factor in non-quantified benefits or costs into the overall analysis. As an alternative to CBA, A-4 suggests that cost-effectiveness analysis can be used to provide a rigorous way to identify options that achieve the most effective use of the resources available without requiring monetization of all relevant benefits or costs.

USDA also takes into account efforts to reduce the burden of information collection on the public. Agencies across USDA are providing electronic alternatives to their traditionally paper-based customer transactions. As a result, producers increasingly have the option to electronically file forms and all other documentation online. Supporting these efforts are ongoing analyses to identify and eliminate redundant data collections and streamline collection instructions. The end result of implementing these initiatives is better service to USDA's customers, enabling them to choose when and where to conduct business with USDA.

(b) To ensure that an agency has the data available with which to conduct a robust retrospective analysis, some agencies will rely on established means for collecting data.

Beyond collecting this information, many USDA agencies rigorously maintain databases that can be leveraged to conduct an informed retrospective analysis. For example, the Grain Inspection, Packers and Stockyards Administration (GIPSA) maintains separate electronic (industry-specific) databases that track complaints received, investigations conducted, formal actions taken and the final resolution or outcome. The data contained within these systems provide GIPSA's management with a wealth of information on industry trends with which to make management decisions regarding rulemaking.

Other USDA agencies routinely communicate with stakeholders. For example, FNS maintains a robust dialogue with the State agencies that operate the programs pursuant to FNS' regulations to identify potential improvements. Recognizing the need to balance simplification and flexibility with strong accountability for taxpayer funds and protections for clients, the agency works closely with its program partners to identify opportunities for reform consistent with their statutory mission.

## VII. Public Participation

Interested persons are invited to submit comments regarding this preliminary plan. USDA welcomes comments from the public on any of USDA's regulations and ways to improve them to help USDA agencies advance the mission of the Department consistent with the Executive Order. USDA encourages the public to comment on those rules that have been in effect for a sufficient amount of time to warrant meaningful evaluation.

Those interested in offering comments are asked to provide them through USDA's Open.gov Web site, a Web-based portal that makes it easy for citizens to participate in Federal activities. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, and ensures timely receipt by USDA. Commenters should follow the instructions provided on that site to submit comments electronically. All comments received will be considered as USDA develops its final plan. A direct link to the Federal Register Notice is here:

<http://www.usda.gov/open/Blog.nsf/dx/04192011075634AMIDEH7E.htm>

E-mail Submission of Comments. Comments may be submitted by E-mail: [reg.review@obpa.usda.gov](mailto:reg.review@obpa.usda.gov). E-mail submission of comments must include the term "Retrospective Review" in the subject line of the message.

Submission of Comments by Mail. Paper, disk, or CD-ROM submissions should be submitted to Julie Hetrick, Office of Budget and Program Analysis, USDA, Jamie L. Whitten Building, Room 101-A, 1400 Independence Ave., SW., Washington, DC 20250.

Submission of Comments by Hand Delivery/Courier: Julie Hetrick, Office of Budget and Program Analysis, USDA, Jamie L. Whitten Building, Room 101-A, 1400 Independence Ave., SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Julie Hetrick, Office of Budget and Program Analysis, Jamie L. Whitten Building, Room 101-A, USDA, 1400 Independence Ave., SW., Washington, DC 20250; Voice: (202) 720-1269.