

# Improving Our Regulations: Final Plan for Periodic Retrospective Reviews of Existing Regulations

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## Table of Contents

1	Overview .....	4
	<i>This overview describes broad initiatives to help EPA achieve a 21<sup>st</sup> century, efficient regulatory program, including replacing outdated paper-based reporting with electronic reporting, expanding information disclosure to improve transparency, and more.</i>	
1.1	A 21st century approach to environmental protection	5
1.2	A more efficient approach to regulation	10
1.3	Conduct of reviews	11
2	Regulations We Plan to Review .....	14
	<i>EPA intends to undertake 35 regulatory reviews for this, our initial review period. These reviews are expected to lead to 16 early actions in 2011, with many more in subsequent years of the review period. This section describes each one.</i>	
2.1	Early actions	17
2.2	Longer term actions	31
3	Public Involvement and Agency Input for this Plan.....	48
	<i>In parallel efforts, EPA sought to learn how public and Agency stakeholders would recommend designing this plan. Both efforts are described in this section.</i>	
3.1	Public involvement in developing this Plan	48
3.2	Agency input into this Plan	50
4	EPA’s Plan for Future Periodic Regulatory Reviews.....	51
	<i>This section defines a process that EPA intends to use for predictable, transparent future regulatory reviews, to be conducted every five years.</i>	
4.1	Management and oversight of the Plan	51
4.2	Process for conducting retrospective reviews	51
4.3	Criteria for regulatory reviews	52
4.4	Public involvement in future review periods	55
4.5	Reporting on each review period	56
4.6	Frequency of review periods	56
5	Evaluation of the First Review Period.....	57

6 Contact Information.....58

Appendix: Questions offered during the public comment period to help the public formulate their comments .....59

General Questions 59

Questions Specific to an Issue or Impact 59

# 1 Overview

EPA developed this *Final Plan for Periodic Retrospective Reviews of Existing Regulations* (the Plan) in response to President Obama’s charge in Executive Order 13563 for each federal agency to “develop...a...plan, consistent with law and its resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.”<sup>1</sup> The Executive Order (EO) also enumerates a number of principles and directives to guide agencies as they work to improve the Nation’s regulatory system, which the Agency intends to use to guide regulatory reviews and related EPA activities.

## **Text Box 1: EPA to Undertake 35 Priority Regulatory Reviews**

In this Plan, EPA defines 35 regulatory reviews for our initial review period. Sixteen of them fit into the category of “early actions,” meaning the Agency intends to propose or finalize an action to modify, streamline, expand, or repeal a regulation or related program during the 2011 calendar year. The other 19 reviews are longer term actions, whereby we will review the regulations in question and assess whether revisions are needed. See section 2 of this Plan for details on each of the 35 reviews.

Though EPA and its partners have made great progress in protecting the environment, the Agency is committed to continual improvement. EPA has a long history of thoughtfully examining its existing regulations to make sure they are effectively and efficiently meeting the needs of the American people. Both statutory and judicial obligations have compelled some of our reviews. Others arise from independent EPA decisions to improve upon existing regulations. In fact, of EPA’s current regulatory workload, almost two-thirds of our activity is a review of an existing regulation.<sup>2</sup> Just as EPA intends to apply the principles and directives of EO 13563 to the priority actions listed in section 2 of this Plan, we intend to likewise apply the EO’s principles and directives to the regulatory reviews that appear in the *Regulatory Agenda*.

EO 13563 is an opportunity to take a fresh look at the Agency’s approach to protecting human health and the environment and an opportunity to modernize our regulatory program. What should a 21<sup>st</sup> century regulatory program look like? How can we better understand the impacts of existing regulations? How do we determine which regulations should be modified, streamlined, expanded, or repealed to be more effective and less burdensome? How can EPA improve collaborations with our partners such as state, local, and tribal governments? What new tools should the Agency employ to improve environmental quality? The initiatives and regulatory reviews described in this Plan are intended to help us thoroughly modernize regulations that are priorities right now, regulations we intend to review as a matter of course

<sup>1</sup> “Improving Regulation and Regulatory Review (Executive Order 13563).” 76 FR 3821 (January 21, 2011). Available from: the Government Printing Office’s Federal Digital System (FDsys): <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>; Accessed: 08/15/11.

<sup>2</sup> This estimate is based on active actions published in EPA’s *Spring 2011 Semiannual Regulatory Agenda*, and does not include actions in the “Completed” or “Long Term” rulemaking stages.

because of statutory or judicial requirements, and regulations brought to our attention by the public.

The current Plan describes a large number of burden-reducing, cost-saving reforms, including 35 priority initiatives. Some of these have recently been completed; others are in process; still others are in their earliest stages. The potential economic savings are significant. For example, a recent final rule exempts milk producers from regulations designed to protect against oil spills; that rule will save \$145 million - \$148 million annually. A recently proposed rule would eliminate redundant air pollution control requirements now imposed on gas stations; that rule would save \$87 million annually. Taken as a whole, recent reforms, already finalized or formally proposed, are anticipated to save up to \$1.5 billion over the next five years. Other reforms described here, including efforts to streamline requirements and to move to electronic reporting, could save more.

EPA emphasizes that Executive Order 13563 calls not for a single exercise, but for “periodic review of existing significant regulations.” It explicitly states that “retrospective analyses, including supporting data, should be released online wherever possible.” Consistent with the commitment to periodic review and to public participation, EPA intends to continue to assess its existing significant regulations in accordance with the requirements of Executive Order 13563. EPA welcomes public suggestions about appropriate reforms. If, at any time, members of the public identify possible reforms to modify, streamline, expand or repeal existing regulations, EPA intends to give those suggestions careful consideration.

## 1.1 A 21st century approach to environmental protection

During our 40-year history, EPA and our federal, state, local, tribal, and community partners have made enormous progress in protecting the Nation’s health and environment through EPA’s regulatory and stewardship programs. However, just as today’s economy is vastly different from that of 40 years before, EPA’s regulatory program is evolving to recognize the progress that has already been made in environmental protection and to incorporate new technologies and approaches that allow us to accomplish our mission more efficiently and effectively. A central goal, consistent with Executive Order 13563, is to identify methods for reducing unjustified burdens and costs.

High-speed information technologies allow real-time reporting of emissions and provide unprecedented opportunities for transparency and public involvement in matters affecting local environmental conditions. These technological advances allow us to better track environmental progress, apply innovative approaches to compliance and reduce regulatory costs. New emission control technologies allow greatly improved environmental performance. Citizens’ interest in living sustainably has grown, and the marketplace increasingly values green products.

EPA’s evolving regulatory program builds upon these nationwide trends, and improvements to our regulatory program should be made not only through our retrospective reviews but also prospectively. Therefore, EPA intends to apply the principles and directives of EO 13563 to both retrospective reviews of existing regulations and the development of new regulations. While this Plan focuses on retrospective reviews, which are enumerated in section 2, it is

important to understand the broader context within which the reviews are being conducted. During our retrospective reviews, EPA intends to seek ways to promote program effectiveness and burden reduction through the following broad initiatives:

- Electronic reporting,
- Improved transparency,
- Innovative compliance approaches, and
- Systems approaches and integrated problem-solving.

### **1.1.1 Electronic reporting**

First, EPA intends to replace outdated paper reporting with electronic reporting. Agency reporting requirements are still largely paper-based, which is inefficient and unnecessarily costly and resource-intensive for reporting entities and states, and ineffective for compliance monitoring and assurance. To reduce these burdens, increase efficiency and effectiveness, improve compliance and reduce pollution over the long-term, the Agency needs a comprehensive plan to convert to 21st century electronic reporting technology while maintaining data security and confidentiality. This will require some short-term investments of time and technology development, but is expected to provide substantial long-term benefits for industry, states, EPA, and the public. A number of the specific regulatory reviews outlined in section 2 of this Plan contain as an essential element a shift to electronic submission of information. In addition to these specific proposals, EPA intends to move away from paper reporting and modernize EPA reporting processes as follows:

- By conducting a targeted review to convert key existing paper reporting requirements to electronic reporting, perhaps through an omnibus rule. As part of this targeted review, EPA may identify some outdated paper reporting requirements that can be eliminated or streamlined once electronic reporting is in place. For example, we are developing a proposed rule for converting existing selected paper-based National Pollutant Discharge Elimination System (NPDES) reporting obligations to a national electronic reporting format. The NPDES e-reporting rule will allow us to eliminate the current annual and quarterly reporting requirements from the states since this information will be generated by the NPDES data systems. The rule will also require the regulated community to submit their Discharge Monitoring Reports (DMRs) electronically reducing the need for manual data entry. These changes represent a significant reduction in paper-based reporting required to be managed and reported by the states. EPA could convert existing paper-based reporting by regulated facilities for other environmental programs to a similar nationally consistent electronic reporting format.

Several program areas in EPA either have recently added electronic reporting requirements to their regulations or have recently proposed adding this requirement. EPA recently promulgated the following Clean Air Act (CAA) rules that require electronic reporting: Coal Preparation and Processing Plants rule (74 FR 51950, Oct. 8, 2009); the Portland Cement rule (75 FR 54970, Sept. 9, 2010); and the Gold Mine Ore rule (76 FR 9450, Feb. 17, 2011). EPA is considering expanding the electronic reporting concept to existing rules in additional program areas under the Safe Drinking Water Act

(SDWA), parts of the CAA, or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

- By developing a strategy for ensuring that new rules incorporate the most efficient electronic reporting techniques.
- By encouraging private sector development of reporting tools to drive innovation, reduce costs, and help regulated entities to comply. Based on the successful Internal Revenue Service model for enabling private vendors to build reporting tools, EPA intends to conduct a proof-of-concept pilot project to see if private vendors could create electronic tools for regulated entities to electronically report their environmental compliance data using an open platform approach. If feasible, this could create opportunities for innovation by private sector entrepreneurs to develop such electronic tools along with incentives for starting and growing companies to commercialize them and create new jobs.

### **1.1.2 Improved Transparency**

Second, in order to improve regulatory effectiveness, EPA intends to enhance transparency by striving to expand public disclosure of pollution, compliance, and other regulatory information to more efficiently provide information to the public upon which choices can be made. Disclosure of pollution, compliance, and other regulatory information can drive better results for health and the environment, and provides communities with information they need about environmental problems that affect them. Improved transparency can help to level the playing field by helping facilities, governments, and the public know what is being accomplished or required in other locations. Both when reviewing existing regulations and when developing new regulations, EPA intends to seek ways to expand public disclosure of pollution, compliance, and other regulatory information to improve the actual results of regulatory requirements and more efficiently provide the public with information necessary to participate in the regulatory process.

### **1.1.3 Innovative Compliance Approaches**

Third, the Agency intends to reduce pollution by improving compliance with EPA regulations in ways that are more effective and efficient while reducing burden. EPA will seek ways to achieve greater compliance both when reviewing existing regulations and when developing new regulations. Effective

#### **Text Box 2: EPA Creatively Structures Regulations to Efficiently and Cost Effectively Increase Compliance**

EPA already has experience demonstrating that creative approaches can increase compliance while reducing cost. For example, we learned in the 1970's that the most effective way to ensure compliance with new unleaded gasoline requirements was not widespread inspections, but simply changing the size of the nozzle used to fill gas tanks. Following the 1996 Safe Drinking Water Act amendments, researchers found that the simple requirement of mailing Consumer Confidence Reports to consumers resulted in a 30-50% increase in utilities' compliance rates with drinking water requirements in Massachusetts. While we are aware that the provision of Consumer Confidence Reports is a means of increasing compliance, we are also aware that their production and distribution can be burdensome on water purveyors and states. EPA intends to review these reporting requirements to determine if burden may be reduced while compliance is maintained or increased; this review is described in detail later in the Plan.

enforcement of environmental regulations promotes the welfare of Americans by protecting the air we breathe and the water we drink, and assuring that complying facilities are not at a competitive disadvantage with those that violate the law. However, due to the sheer number of regulated facilities, the increasing contributions of large numbers of smaller sources to important environmental problems, and federal and state budget constraints, we can no longer rely primarily on the traditional single facility inspection and enforcement approach to ensure compliance across the country. EPA needs to embed innovative mechanisms in the structure of its rules to do a better job of encouraging compliance on a wide scale. (See text box 2.)

To supplement traditional compliance approaches, EPA plans to routinely structure federal regulations and permits as effectively as possible to achieve compliance, through adequate monitoring requirements, public disclosure, information and reporting mechanisms, and other structural flexibilities, including self-certification, and third-party verification.

#### **1.1.4 Systems Approaches and Integrated Problem-Solving**

Fourth, the Agency intends to design a 21<sup>st</sup> century approach to environmental regulation by using systems approaches and integrated problem-solving strategies to accelerate pollution prevention and other beneficial environmental outcomes. A primary way to promote pollution prevention and sustainable outcomes is through broader adoption of problem-solving approaches that bring to bear all relevant tools – regulatory and non-regulatory – to provide integrated and

#### **Text Box 3: Promoting the Green Economy and Innovation**

Pollution prevention efforts across EPA have helped protect children and families in this country from exposure to harmful pollutants and has significantly reduced the amount of contaminants released into the environment. These ongoing efforts include Energy Star, WasteWise, Plug-In To eCycling, WaterSense, and our Green Electronics, Green Chemistry, Green Engineering, Design for the Environment (DfE), and Economy, Energy and Environment (E3) programs. EPA intends to improve coordination among these programs to maximize their effectiveness.

EPA engaged the National Academy of Sciences (NAS) to convene national experts and prepare a report on how to make sustainability operational at EPA. One charge to the academy was to identify the critical tools, methods, and scientific approaches needed to advance sustainability. While the concept of sustainability science has evolved over the past two decades, it has not been formerly incorporated into EPA's operational framework. The NAS Report (the so-called Green Book) was made publically available on August 2. EPA has begun to review the recommendations and will aim for timely responses in the months ahead.

#### **Text Box 4: Integrated Problem Solving: A Drinking Water Example**

EPA is seeking a new approach to expand public health protection for drinking water by going beyond the traditional framework that addresses contaminants one at a time. The Agency has conducted a national conversation to identify better ways to address contaminants in groups, improve drinking water technology, and more effectively address potential risks to give Americans greater confidence in the quality of their drinking water.

EPA is focused on four principles that will provide greater protection of drinking water. These are:

- Address contaminants as groups rather than one at a time so that enhancement of drinking water protection can be achieved cost-effectively.
- Foster development of new drinking water technologies to address health risks posed by a broad array of contaminants.
- Use the authority of multiple statutes to help protect drinking water.
- Partner with states to share more complete data from monitoring at public water systems (PWS).

comprehensive solutions to priority environmental problems.

EPA's research and development activities can help provide a strong scientific foundation for innovative solutions. Strategic sequencing of regulations as they are developed will allow us to consider the cumulative impacts of our rules and to regulate more efficiently. Use of systems and life cycle analyses allows us to pinpoint the most effective points for policy intervention. Applying the full spectrum of policy tools available to the Agency can maximize environmental results while reducing costs. (See text box 3.)

Another example where the Agency has successfully applied this integrated approach is in the CAA area source rule for auto body shops. A technology based control limit was complemented by a non-regulatory pollution prevention approach. Partners in the *Design for Environment's* Safer Product Labeling Program developed an alternative solvent that does not require emissions control technology, thus providing industry a way to avoid the costs of installing pollution control equipment by using alternative chemicals. A third example is EPA's current efforts to develop an integrated approach to drinking water protection. (See text box 4.)

One final example of EPA's commitment to integrated solutions is EPA's strong support and promotion of the use of green infrastructure (GI) approaches to manage wet weather through infiltration, evapotranspiration, and rainwater harvesting. EPA is using GI in National Pollutant Discharge Elimination System (NPDES) permits, as well as remedies designed to comply with the Clean Water Act (CWA), recognizing that green infrastructure can be a cost-effective, flexible, and environmentally-sound approach to reduce stormwater runoff and sewer overflows and to meet CWA requirements. Green infrastructure also provides a variety of community benefits including economic savings, green jobs, neighborhood enhancements and sustainable communities. Because of these benefits, EPA is working with communities around the country to incorporate green designs into NPDES permits and enforcement agreements. (See text box 5.)

**Text Box 5: Integrated Problem Solving: Green Infrastructure and Management of Municipal Wastewater Systems**

EPA continues to work closely with many communities to develop pragmatic and effective solutions, including green infrastructure (GI) and traditional engineering that address both long-term and daily management of their wastewater systems. EPA recognizes the need to provide municipalities with flexibility to implement GI so that the solutions can be sustained over the long term and communities can realize the multiple benefits of GI, including neighborhood enhancements, green jobs, and energy savings. EPA also incorporates flexibility into both performance criteria and implementation schedules as evidenced by recent settlements with the cities of Kansas City, Cleveland, and St. Louis. More information on St. Louis appears below. For information on:

- Cleveland, see: [http://www.epa.gov/agingepa/press/epanews/2010/2010\\_1222\\_2.htm](http://www.epa.gov/agingepa/press/epanews/2010/2010_1222_2.htm)
- Kansas City, see: <http://epa.gov/compliance/resources/cases/civil/cwa/kansascity.html>

**St. Louis, MO** - The St. Louis proposed consent decree, includes a \$100 million green infrastructure storm water retrofit program, focused in low income neighborhoods. This will reduce CSO flows to the Mississippi River by 10 percent annually or approximately 85 million gallons per year, beyond the gray infrastructure portion of the remedy. The green infrastructure program will start with a pilot project to determine the most effective green infrastructure techniques, such as green roofs, green streets and green parking retrofits.

## 1.2 A more efficient approach to regulation

EPA recognizes that there is potential for regulatory overlap and contradiction between various jurisdictional requirements. (See Executive Order 13563, section 3, on integration and innovation.) In this setting, regulations often appear to be excessive. Businesses are concerned with inconsistency and duplication across varying jurisdictions. The Agency is seeking ways to introduce greater efficiencies into our regulatory program and achieve greater harmonization among related regulations, both among EPA regulations and among the regulations of other federal, state, local, and tribal agencies. With the broad initiatives outlined previously, as well as the regulatory reviews described in section 2, EPA will look for ways to protect human health and the environment more efficiently and effectively.

As an example, and consistent with Executive Order 13563, section 3, EPA is examining ways to harmonize its vehicle regulations with those of California and other federal agencies in the following areas:

1. Fuel economy labeling with the California Air Resources Control Board (CARB) and the Federal Trade Commission;
2. Vehicle greenhouse gas standards and fuel-economy standards in conjunction with the Department of Transportation (DOT) and CARB; and
3. Vehicle testing and compliance standards with CARB.

Another example is described in the text box 6. By using a flexible systems approach to vehicle and fuel regulations, EPA has spurred a sustainable transportation market and given the industry the flexibility to design innovative technological responses to regulatory requirements.

### **Text Box 6: Making Transportation More Sustainable: A Flexible Systems Approach**

The substantial emission reductions achieved through vehicle and fuel standards depends on extensive collaboration between EPA and vehicle, engine, and fuel manufacturers; state and local governments; transportation planners; and individual citizens. EPA takes a systems approach, setting standards for both vehicles and fuels. For example, the Vehicle Tier 2 standards were combined with low sulfur gasoline standards to enable cleaner vehicle technologies. This results in greater emissions reductions at lower costs. Vehicle, engine, and fuel regulations include a number of flexibilities to help industry achieve the standards and reduce compliance costs, such as averaging, banking and trading, early credits, phase-in schedules, exemptions, and hardship relief. Compliance reports by vehicle manufacturers, fuel producers and others are virtually all submitted electronically. This flexible approach to mobile source emission control is responsible for greatly reducing mobile source air pollution during the last 30 years.

The transportation industry has responded to this flexible systems approach with improvements to engine and vehicle technologies that help to make transportation more sustainable. These improvements include:

- Designing highly efficient combustion systems to minimize exhaust pollution.
- Introducing vapor recovery systems to capture evaporating gasoline.
- Using computer technologies to monitor and control engine performance.
- Developing effective "after treatment" technologies, such as catalytic converters and particulate filters, that remove pollutants from the exhaust stream before they can escape into the atmosphere.
- More recently, reducing greenhouse gases and improving fuel economy through engine improvements like gasoline direct injection and use of turbochargers, increased production of hybrids and initial commercialization of electric vehicles.

The technological advances of the Information Age also provide an opportunity to make environmental protection more data-driven and analytically rigorous while still collecting data and analyzing performance in a more efficient way. (As an example, see text box 7.) As the costs of acquiring, analyzing, and disseminating data is reduced, it becomes easier for EPA to cost-effectively achieve its mission. EPA is committed to moving the regulatory process into alignment with the opportunities presented by new information technology. Simultaneously, EPA is working to be responsive to President's memorandum "Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments."<sup>3</sup> This memorandum is complementary to EO 13563 as it encourages agencies to identify ways to reduce unnecessary regulatory and administrative burdens on state, local and tribal partners, and redirect resources to services that are essential to achieving better outcomes at lower cost.

### 1.3 Conduct of reviews

On a predictable, transparent, five-year cycle, EPA intends to ask the public to nominate additional regulations for review and intends to commit to new

#### **Text Box 7: Technological Advances Lead to Cheaper and Cleaner Outcomes: Onboard Diagnostics**

By capitalizing on advances in information technology for vehicle diagnostics, the Agency has helped to achieve cheaper and cleaner outcomes in our automotive emissions control program. Vehicles are equipped with a "Check Engine Light" that illuminates if a component failure could cause emission problems. The use of Onboard Diagnostic Systems (OBD) has resulted in dramatic improvements in the performance and operation of motor vehicles, reducing emissions significantly, reducing costs associated with emission control, and improving durability and maintenance. OBD systems set the dashboard light which is visible to the owner at the point in time either a malfunction of an emission related component or an actual emission problem occurs. This provides a vehicle owner the opportunity to fix the problem when it occurs shortening the amount of time the problem exists. In addition, in areas with inspection and maintenance programs vehicles with such a light on must be repaired prior to passing the inspection. In both cases OBD identifies potential emission problems prior to the point in time such problems would have been identified by prior testing technologies. It has also made it easier for motorists and repair technicians to identify and correct problems as they arise, before problems compound and develop into more serious and costly situations. As a result of Clean Air Act requirements, all 1996 and newer cars and trucks were required to include onboard diagnostic systems (OBD) that use sensors and computer technology to monitor the performance of the engine and emission control systems on vehicles. EPA issued regulations to implement the OBD program in 1993.

A simple OBD scan tool can now determine if there are problems with the emission control system and can replace equipment costing 100 times more. Correspondingly, the cost of vehicle inspection has dropped from around \$25 per vehicle to about \$10 per vehicle in most areas doing only OBD testing, leading to major savings to motorists. Vehicle emissions inspections are also conducted much more quickly, saving time for motorists.

EPA recently expanded the implementation of OBD to include heavy-duty vehicles. It is anticipated that OBD systems will reduce emissions from this segment of the vehicle fleet, reduce costs associated with controlling heavy-duty vehicle emissions, and improve the quality and longevity of emission related repairs on such vehicles.

For more information, see:

- "Control of Air Pollution from New Motor Vehicles and New Motor Vehicle Engines (Final Rule)." 58 FR 9468 (February 19, 1993). Print.

<sup>3</sup> "Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments, February 28, 2011 (Presidential Memorandum from President Barack Obama to Heads of Executive Departments and Agencies)" *Daily Compilation of Presidential Documents*, No. 201100123. Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/DCPD-201100123/pdf/DCPD-201100123.pdf>; Accessed: 08/15/11.

reviews to supplement those described in this Plan. As explained in section 4 of this Plan, future review priorities will be determined by:

- Comments gathered from the public, other federal agencies, and EPA experts;
- The expertise of the EPA offices writing the regulations;
- Agency and Administration priorities, such as judicial rulings, emergencies, etc.;
- The principles and directives of EO 13563; and
- Agency resources.

EPA plans to use the *Semiannual Regulatory Agenda* and relevant portions of the EPA website to regularly report on the reviews that are underway.

With regard to EPA's initial list of initiatives and retrospective reviews, and with regard to future reviews, the Agency intends to reduce costs, promote simplification, and to:

- **Maintain focus on EPA's mission.** First and foremost, EPA intends to focus our regulatory reviews on protecting human health and safeguarding the environment as efficiently and effectively as possible.
- **Meet the Agency's current obligations.** This Plan recognizes the Agency's existing statutory and judicial requirements for regulatory reviews. As EPA moves forward, we intend to ensure that resources continue to be available to meet these mandatory obligations while still addressing the many discretionary reviews identified in this Plan. As we conduct regulatory reviews, EPA will follow any statutory and/or judicial requirements that apply to the particular regulation(s) under review. Statutes may affirmatively require the Agency to consider specific factors in reviewing regulations or contain express limitations on the factors the Agency may take into account.
- **Make the Plan predictable.** EPA managers, who are responsible for budgeting for the Plan, as well as EPA staff who implement it and external stakeholders who want to participate, need to be able to forecast and plan for the upcoming work.
- **Make the Plan flexible and responsive to priority needs.** Despite the desire to keep to a predictable schedule, EPA retains the discretion to modify the schedule as new priorities, emergencies, resource constraints, and other considerations arise.
- **Follow statutorily mandated procedural requirements.** This Plan establishes the means by which EPA intends to select candidates for regulatory review, but once a regulation is selected, the Agency intends to follow our established, comprehensive regulatory development process to discern what, if any, revisions are necessary and to develop the revisions. The Agency intends to follow the procedures set out in, and conduct the analyses required by, the Administrative Procedure Act, other applicable administrative statutes, applicable Executive Orders, and internal EPA rulemaking procedures that constitute the legal and policy framework for EPA's rule development activities. In revising regulations, EPA intends to follow its established policies to provide meaningful opportunities for public involvement, evaluate direct and indirect

public health and environmental implications, and analyze the benefits and costs of its rules.

- **Provide leadership regarding environmental justice issues.** Consistent with EO 12898 and the Administrator's priorities, EPA also intends to continue its leading role on environmental justice matters to ensure that, in the development of its regulations, EPA considers overburdened communities and vulnerable populations, as well as the potential for adverse disproportionate impacts to low income, minority, and tribal populations. Further EPA intends to continue advancing environmental justice across the federal government through the actions outlined in *Plan EJ 2014's* draft implementation plans, the Agency's overarching strategy for integrating environmental justice in its programs, policies and activities, as well as through its review of other federal EO 13563 plans.
- **Provide leadership regarding children's health issues.** Consistent with EO 13045, EPA's Children's Health Policy, EPA's FY 2011-2015 Strategic Plan, and the Administrator's priorities, EPA will continue to lead efforts to protect children from environmental health risks. To accomplish this, EPA intends to use a variety of approaches, including regulation, enforcement, research, outreach, community-based programs, and partnerships to protect pregnant women, infants, children, and adolescents from environmental and human health hazards. The Agency's strategy for integrating children's health protection is described in EPA's FY 2011-2015 Strategic Plan, Cross-Cutting Fundamental Strategy, "Working for Environmental Justice and Children's Health." EPA utilizes the document, "Guide to Considering Children's Health When Developing EPA Actions," to implement EO 13045 and EPA's Policy on Evaluating Health Risks to Children.<sup>4</sup>
- **Strengthen intergovernmental partnerships.** Consistent with the principles underpinning EO 13132 (Federalism), and in recognition of the fact that environmental professionals at the state, local, and tribal government level play a critical role in the implementation of federal environmental regulations, EO 13563 - through its rule identification and revision processes - provides EPA and its intergovernmental partners with an opportunity to further strengthen their working relationship and, thereby, more effectively pursue their shared goal of protecting the nation's environmental and public health.

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<sup>4</sup> United States. Environmental Protection Agency. *Guide to Considering Children's Health When Developing EPA Actions.* Washington: EPA, October 2006. Available from: EPA website, [http://yosemite.epa.gov/oehp/ochpweb.nsf/content/ADPguide.htm/\\$File/EPA\\_ADG\\_Guide\\_508.pdf](http://yosemite.epa.gov/oehp/ochpweb.nsf/content/ADPguide.htm/$File/EPA_ADG_Guide_508.pdf); Accessed: 08/15/11.

## 2 Regulations We Plan to Review

EPA intends to undertake 35 regulatory reviews for this, our initial review period. Of these, EPA is statutorily required to conduct two; all of the rest are discretionary reviews that may make EPA's regulatory program more effective or less burdensome. Sixteen of them fit into the category of "early actions," meaning the Agency intends to take a specific step which could lead to modifying, streamlining, expanding, or repealing a regulation or related program during the 2011 calendar year. The other 19 reviews are longer term actions; the Agency intends to review the regulations in question and assess whether revisions are needed. Each action is described in this section, and the next milestone for each action is included where available.

It is important to keep in mind that the 35 reviews in this section are our priority activities for meeting the principles of EO 13563, but the Agency is undertaking many more reviews than this, and it is expected that a number of these will reduce costs. Of the approximately 200 active actions that are listed in EPA's *Spring 2011 Semiannual Regulatory Agenda*, roughly 60% are reviews of existing regulations.<sup>5</sup>

Although many of these ongoing reviews already meet the spirit and principles of EO 13563, the Agency is also considering the thoughtful public comments we received during our public involvement process (described in section 3). Those, too, are serving to inform the reviews. EPA views EO 13563 as an opportunity to improve the way the Agency does business – to help create a more efficient, 21<sup>st</sup> century regulatory program.

The Agency has recently completed a number of actions, consistent with Executive Order 13563, that are illustrative of efforts we intend to pursue under this Plan:

### **Text Box 8: Meeting the Principles of EO 13563: The Spill Prevention, Control, and Countermeasure (SPCC) Rule**

The SPCC amendments for the dairy industry are a good example of how the Agency strives to meet the principles of the EO, such as minimizing cumulative burden, maximizing net benefits, eliminating direct regulation when alternatives exist, and simplifying and harmonizing regulations across federal agencies. On January 15, 2009, EPA proposed amendments to the SPCC rule to tailor and streamline requirements for the dairy industry by excluding from the SPCC requirements milk containers and associated piping and appurtenances. The rule proposed to address concerns raised specifically by the dairy farm sector on the applicability of the SPCC requirements to milk containers. In April 2011, EPA finalized this action and excluded all milk and milk product containers, and associated piping and appurtenances, from the SPCC requirements, including an exclusion of the capacity of these milk and milk product containers from a facility's total oil storage capacity calculation to determine if the facility is subject to SPCC. EPA estimates that dairy farms and milk product manufacturing plants will incur savings of \$145 - 148 million per year (2010\$).

For more information, see:

- "Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule— Amendments for Milk and Milk Product Containers; Final Rule," 76 FR 21652. Available from: FDsys <http://www.gpo.gov/fdsys/pkg/FR-2011-04-18/pdf/2011-9288.pdf>; Accessed 08/15/2011.

<sup>5</sup> This estimate is based on active actions published in EPA's *Spring 2011 Semiannual Regulatory Agenda*, and does not include actions in the "Completed" or "Long Term" rulemaking stages.

- The Spill Prevention, Control, and Countermeasure (SPCC) amendments for the dairy industry are a good example of a review which met EO principles such as minimizing cumulative burden, maximizing net benefits, and simplifying and harmonizing regulations across federal agencies, while producing annual cost savings of \$145 to \$148 million (in 2010 dollars (2010\$)).<sup>6</sup> (See text box 8.)
- On March 29, 2011, EPA finalized a regulation<sup>7</sup> pertaining to alternative fuel conversions of vehicles and engines. The regulation responded to concerns that the approval process for converting gasoline or diesel vehicles to operate on alternative fuels (e.g., natural gas, propane, alcohol, or electricity) is too costly and cumbersome. The Agency adopted a new approach that streamlines and simplifies the process by which manufacturers of clean alternative fuel conversion systems may qualify for exemption from the CAA prohibition against tampering. The new options reduce some economic and procedural impediments to clean alternative fuel conversions while maintaining environmental safeguards to ensure that acceptable emission levels from converted vehicles and engines are sustained. For light-duty engines, the broad average cost of compliance for one certificate prior to the issuance of this regulation was about \$43,687 (2010\$); but as a result of EPA’s regulatory review, the estimated cost under the same assumed conversion scenario would be about \$36,177 for new light-duty engines and \$12,972 for intermediate-age and older light-duty engines. For heavy-duty engines, the cost savings are expected to be even greater. Total annual cost savings are estimated at \$1.1 million (2010\$).
- On July 15, 2011, EPA finalized a regulation that modified the Lead Renovation, Repair and Painting Rule.<sup>8</sup> Common renovation activities like sanding, cutting, and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children. To protect against this risk, on April 22, 2008, EPA issued the Lead Renovation, Repair, and Painting Program rule (Lead RRP) requiring the use of lead-safe practices and other actions aimed at preventing lead poisoning.<sup>9</sup> Under the rule, beginning April 22, 2010, contractors performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. On May 6, 2010, EPA proposed additional requirements designed to ensure that renovation work areas are adequately cleaned after renovation work is

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<sup>6</sup> Cost savings estimates provided in the final rule are in 2009\$. All cost savings estimates in this Plan are presented in 2010\$ and therefore may differ from those presented in the rule’s original analyses.

<sup>7</sup> “Clean Alternative Fuel Vehicle and Engine Conversions (Final Rule).” 76 FR 19830 (April 08, 2011). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2011-04-08/pdf/2011-7910.pdf>; Accessed: 08/15/11.

<sup>8</sup> “Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program (Final Rule).” 76 FR 47918 (August 05, 2011). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2011-08-05/pdf/2011-19417.pdf>; Accessed: 08/15/11.

<sup>9</sup> “Lead; Renovation, Repair, and Painting Program (Final Rule).” 73 FR 21692 (April 22, 2008). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2008-04-22/pdf/E8-8141.pdf>; Accessed: 08/15/11.

finished and before the areas are re-occupied.<sup>10</sup> The proposed rule would have added requirements including dust wipe testing after renovations and additional cleaning, if needed, designed to ensure that renovation work areas meet clearance standards before re-occupancy. The cost of EPA's proposed additional testing requirements were between \$278 million to \$300 million per year (2010\$).<sup>11</sup> After carefully weighing the issues and considering the comments from over 300 stakeholders, EPA has determined that there are currently no data or information that call into question the reliability, safety, and efficacy of the lead safe work practices established in the 2008 RRP rule. Therefore, EPA did not finalize additional “clearance” requirements that contractors obtain lead-dust testing and laboratory analysis of the results for renovation jobs. EPA believes that if certified and trained renovation contractors follow EPA’s 2008 RRP rule by using lead-safe work practices and following the cleaning protocol after the job is finished, lead-dust hazards will be effectively reduced.

- Working in coordination with DOT, EPA finalized changes to the fuel economy label that consumers see on the window of every new vehicle in dealer showrooms.<sup>12</sup> This summer, EPA and the National Highway Traffic Safety Administration (NHTSA) unveiled the most dramatic overhaul to fuel economy labels since they were introduced 35 years ago. When the new labels start to appear in showrooms and online, shoppers will have more information at their fingertips than ever before. The redesigned label, representing a harmonized and coordinated effort with DOT, will provide the public with new information on vehicles’ fuel economy, energy use, fuel costs, and environmental impacts. For the first time, for instance, comparable fuel economy and environmental ratings will be available for all new vehicles, including advanced technology vehicles like electric cars. Consumers will be able to make comparisons – car by car – to ensure they have the best information to help save on fuel costs and reduce emissions.
- In June 2011, EPA issued direct final amendments to the air toxic standards for the plating and polishing national emission standards for hazardous air pollutants (NESHAP). Toxic air pollutants, or air toxics, are known or suspected to cause cancer and other health problems. Area sources are smaller facilities who emit less than the "major source" threshold of 10 tons per year of pollution, but whose emissions jointly contribute to pollution problems. The direct final amendments clarify that the plating and polishing NESHAP does not apply to any bench-scale activities. It was not our intent to include those activities in the original rule because these emissions are too small to accurately measure and it would be an unreasonable burden to the public to do so. Bench-scale is defined to be any operation that is small enough to be performed on a bench, table, or similar structure so that the equipment is not directly contacting the floor. The

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<sup>10</sup> “Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program (Proposed Rule).” 75 FR 25038 (May 06, 2010). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2010-05-06/pdf/2010-10102.pdf>; Accessed: 08/15/11.

<sup>11</sup> To achieve comparable estimates across regulations, this cost savings estimate was updated to 2010\$. The analysis for this particular rulemaking originally used 2009\$.

<sup>12</sup> “Revisions and Additions to Motor Vehicle Fuel Economy Label (Final Rule).” 76 FR 39478 (July 06, 2011). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2011-07-06/pdf/2011-14291.pdf>; Accessed: 08/15/11.

direct final amendments also make several technical corrections and clarifications to the rule's text to reduce misinterpretations. These corrections and clarifications do not make material changes in the rule's requirements. The Direct Final Rule published June 20, 2011, along with a related proposal that invited public comments.

These sorts of efforts, where we worked with stakeholders and other agencies to achieve a positive outcome for the regulated community while protecting human health and the environment, is what the Agency will strive to replicate in the priority activities described later in this section. EPA expects to realize substantial cost and burden reductions as a result of a number of our reviews. Table 1 provides cost and other savings estimates associated with our completed reviews and draft cost savings estimates for some of the ongoing priority reviews described in the rest of this section. We estimate that EPA will achieve between \$309.1 and \$360.1 million (2010\$) in costs savings annually from the four completed and proposed retrospective reviews listed in Table 1. Taken as a whole, recent reforms, already finalized or formally proposed, are anticipated to save up to \$1.5 billion over the next five years. Keep in mind that there are a total of five completed and 35 ongoing regulatory reviews in this Plan. EPA expects the total cost savings of all of the reviews to be greater than shown in this table; however, we are unable to provide draft cost saving estimates for many of our ongoing reviews since it is too soon in the review process.

**Table 1: Savings Estimates from Review of EPA Regulations**

<b>Review</b>	<b>Cost Savings (Millions 2010\$)</b>
<b>Completed</b>	
Spill Prevention, Control and Countermeasure amendments for the dairy industry	\$145 - \$148
Alternative fuel conversions of vehicles and engines	\$1.1
<b>Proposed</b>	
Vehicle vapor recovery systems (#2.2.1)	\$87
E-Manifest (#2.2.4)	\$76- \$124
<b>Total</b>	<b>\$309.1 - \$360.1</b>
<b>Reexamined Proposal</b>	
Lead Renovation, Repair and Painting Program clearance standards	\$278 - \$300
<b>Draft Estimates from Ongoing Reviews</b>	
Consumer confidence reports for primary drinking water regulations (#2.2.6)	\$1
National Pollutant Discharge Elimination System (NPDES): coordinating permit requirements and removing outdated requirements (#2.1.8)	\$1.6

## 2.1 Early actions

Of the 35 priority regulatory reviews presented in this section, the following 16 are early actions that are intended to yield in 2011 a specific step toward modifying, streamlining, expanding, or repealing a regulation or related program. Asterisks (\*\*) preceding the heading of a review indicate those reviews which were suggested during the public comment periods held for this Plan.

1. \*\* Gasoline and diesel regulations: reducing reporting and recordkeeping
2. \*\* Equipment leak detection and repair: reducing burden
3. Regulatory certainty for farmers: working with the U.S. Department of Agriculture (USDA) and states
4. \*\* Modern science and technology methods in the chemical regulation arena: reducing whole-animal testing, reducing costs and burdens, and improving efficiencies
5. \*\* Electronic online reporting of health and safety data under the Toxic Substances Control Act (TSCA); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and Federal Food, Drug, and Cosmetic Act (FFDCA): reducing burden and improving efficiencies
6. \*\* National Priorities List rules: improving transparency
7. Quick changes to some TSCA reporting requirements: reducing burden
8. \*\* National Pollutant Discharge Elimination System (NPDES): coordinating permit requirements and removing outdated requirements
9. \*\* National primary drinking water regulations – Long Term 2 Enhances Surface Water Treatment: evaluating approaches that may maintain, or provide greater, public health protection
10. \*\* Combined Sewer Overflows (CSOs) and integrated planning for wet weather infrastructure investments: providing flexibilities
11. \*\* Vehicle regulations: harmonizing requirements for:
  - a. Greenhouse gas and fuel economy standards
  - b. Vehicle emission standards
12. Multiple air pollutants: coordinating emission reduction regulations and using innovative technologies
13. \*\* NSPS reviews and revisions under the CAA: setting priorities to ensure updates to outdated technologies
14. \*\* CAA Title V Permit programs: simplifying and clarifying requirements
15. Innovative technology: seeking to spur new markets and utilize technological innovations
16. \*\* The costs of regulations: improving cost estimates

### 2.1.1      \*\*<sup>13</sup> Gasoline and diesel regulations: reducing reporting and recordkeeping

**Reason for inclusion:** EPA intends to review existing gasoline and diesel regulations that apply to fuel producers, ethanol blenders, fuel distributors, and others for areas where recordkeeping and reporting obligations can be modified to reduce burden. This is consistent with EO 13563’s directive to relieve regulatory burden.

**Background:** EPA intends to conduct this review in conjunction with the rulemaking on the next set of vehicle emission and fuel standards, known as “Tier 3 motor vehicle emission and fuel standards,” informed by public comments received in the EO 13563 public outreach process.

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<sup>13</sup> Asterisks (\*\*) preceding the heading of a review indicate those reviews which were suggested during the public comment periods held for this Plan.

**Next step:** EPA expects to propose modifications to gasoline and diesel regulations in late 2011.

### 2.1.2      \*\* Equipment leak detection and repair: reducing burden

**Reason for inclusion:** The associated actions are included in the EO Plan so that EPA can reduce the burden on industry and streamline leak detection and repair (LDAR) programs. This is done in support of EO 13563, which promotes innovative technologies while upholding EPA's mission to protect human health and the environment. These goals are expected to be achieved by creating uniform equipment leak standards and removing regulatory overlap.

**Background on the action:** Currently, there are many rules (both NESHAP and NSPS) applicable to sources in the Chemical and Petroleum Refining sectors that establish LDAR requirements. These rules often vary, but generally include requirements for periodic monitoring via Method 21, which specifies the use of a hand-held probe to detect leaks.

Two primary efforts are underway with respect to LDAR. First, we are developing "Uniform Standards" for Equipment Leaks. These standards are intended to establish uniform equipment leak definitions, monitoring frequencies and uniform requirements for reporting, recordkeeping, and repair. A referencing subpart, such as the Chemical Sector rule or the Refinery Sector rule would then point to the LDAR Uniform Standards. The end result is expected to be a consistent set of requirements across these industries.

The second effort is the Alternative Work Practice (AWP) to Detect Leaks from Equipment, which was promulgated in 2008 as a voluntary AWP for LDAR. The AWP includes using an optical gas imaging camera and annual Method 21 screening for leak detection. We received a request for administrative reconsideration of the AWP from the American Petroleum Institute in 2009 to remove the Method 21 requirement. We are currently considering our response.

**Next step:** We are currently considering comments received on the AWP petition. We intend to evaluate the comments related to the proposed Oil and Gas NSPS, using this feedback to respond to the AWP petition.

We plan to propose the Equipment Leak Uniform Standards in fall 2011.

### 2.1.3      Regulatory certainty for farmers: working with the U.S. Department of Agriculture (USDA) and states

**Reason for inclusion:** EPA intends to work with USDA and state governments to explore flexible, voluntary approaches for farmers to achieve water quality improvements, consistent with EO 13563's directives of achieving greater coordination across agencies and allowing for flexibility.

**Background:** In conjunction with USDA and several states, EPA is exploring "certainty" mechanisms that encourage farmers to implement voluntary practices that reduce impacts on

water quality. In particular, if farmers' actions result in quantifiable and verifiable improvements in water quality and resource conservation, EPA and USDA could work with states to develop programs that can provide assurances that the farmers' actions are, for a reasonable, fixed period of time, 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.

**Next step:** EPA expects that the project will be up and running at the state level with USDA partners by the end of the calendar year.

#### **2.1.4      \*\* Modern science and technology methods in the chemical regulation arena: reducing whole-animal testing, reducing costs and burdens, and improving efficiencies**

**Reason for inclusion:** This review is included in the Plan because EPA intends to seek ways to more efficiently assess the health and environmental hazards, as well as the exposure potential, of chemicals while reducing costs and burdens. Reducing the costs associated with whole-animal testing is consistent with EO 13563's directive to relieve regulatory burden.

**Background:** The identification, evaluation, and regulation of chemicals to protect human health and the environment is central to EPA's mandate. Given the challenge of assessing more chemicals with greater speed and accuracy, and to do so using fewer resources and experimental animals, new approaches in biological and computational sciences are needed to ensure that relevant information is available to meet the challenges of prioritization, targeted testing, and risk assessment.<sup>14</sup>

Prioritization can focus resources on chemicals that are believed to pose the greatest risk to human health and/or the environment. There are also many chemicals for which a substantial amount of information is known about hazard and/or exposure, but more testing is needed. A more efficient science-based approach to determine testing needs for these chemicals can reduce the use of experimental animals and testing burdens, as well as facilitate the timely development of risk assessments and ultimately informed and timely regulatory decisions that are based on sound science.

EPA is drafting a work plan to develop and move towards adoption of new science-based approaches like computational toxicology tools to:

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<sup>14</sup> See also the 2007 report from the National Research Council. Citation: ---. National Research Council of the National Academies. *Toxicity Testing in the 21<sup>st</sup> Century: A Vision and a Strategy*. Washington: National Academies Press, 2007. Available from: The National Academies Press website, [http://www.nap.edu/openbook.php?record\\_id=11970](http://www.nap.edu/openbook.php?record_id=11970); Access: 08/15/11.

- Prioritize chemicals for risk assessment/management purposes. The objective is to identify chemicals or groups of chemicals with the highest potential for exposure and/or human health/environmental effects and focus resources on those chemicals.
- Develop the tools to base chemical risk management decisions about potential human health and ecological risks on sufficient, credible data and on information that is tailored around the specific compound as well as the needs of the risk assessment and risk management decisions.

This work plan is expected to describe the major steps needed to develop and transition to the decision support tools (i.e., computational toxicology methods) for priority setting and targeted testing, and is expected to propose three case studies relevant to industrial chemicals, water contaminants, and pesticides. In addition, EPA intends to identify the steps needed to satisfy the validation requirements related to regulatory acceptance of these new approaches for use in screening under the Endocrine Disruptors Screening Program (EDSP) in the near future.

**Next step:** In 2011, EPA intends to expand its efforts to engage interested stakeholders in this project.

#### **2.1.5      \*\* Electronic online reporting of health and safety data under the Toxic Substances Control Act (TSCA); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); and Federal Food, Drug, and Cosmetic Act (FFDCA): reducing burden and improving efficiencies**

**Reason for inclusion:** This review is included in the Plan so that EPA can explore ways to reduce regulatory burden by transitioning from paper-based reporting to electronic reporting for industries that report chemical-related health and safety data under TSCA, FIFRA, and FFDCA. Existing TSCA regulations tied to this review include the 2010 TSCA Section 5 Premanufacture and Significant New Use Notification Electronic Reporting rule and the 2011 TSCA Inventory Update Reporting Chemical and Data Reporting rule.

**Background:** EPA currently collects a variety of chemical-specific health and safety data under several different regulations issued pursuant to TSCA, FIFRA, and FFDCA. When consulting with the public as this Plan was developed, industry suggested that electronic online reporting could help to reduce overall reporting and recordkeeping burdens, although some also expressed concern that the information continue to be protected as statutorily required. EPA has already begun efforts to incorporate online electronic reporting of information it collects under the TSCA regulations. Furthermore, we initiated an electronic reporting pilot project several years ago that accepted electronic copies of some pesticide information submitted under FIFRA and FFDCA. As part of our current retrospective review, we intend to consider lessons learned from stakeholders involved in this pilot project and identify a timeline and process for expanding the project.

**Estimated potential cost or burden reduction:** Online electronic reporting can reduce burden and costs for the regulated entities by eliminating the costs associated with printing and mailing

this information to EPA, while at the same time improving EPA's efficiency in reviewing regulations. The regulated community has indicated that these savings could be substantial.

**Next steps:** Later this year, the Agency expects to propose revisions to implement electronic reporting for the submission of health and safety data under TSCA. Additionally, within the next 12 months, EPA intends to develop a workplan to consider electronic reporting options under FIFRA and FFDCA for pesticide information. For the consideration of electronic reporting options for pesticide submissions, in 2011 EPA intends to begin developing a workplan for completing this review effort.

#### **2.1.6      \*\* National Priorities List rules: improving transparency**

**Reason for inclusion:** This review is part of the Plan so that EPA can consider ways to further ensure meaningful and substantial state involvement in decisions to place sites on the National Priorities List (NPL), in keeping with EO 13563's directive to provide an "open exchange of information and perspectives among State, local, and tribal officials."

**Background:** When consulting with the public as this Plan was developed, the National Governors Association commented on the need for EPA to share information that we rely upon to determine whether sites should be placed on the NPL. The NPL is the list of national priorities among the sites with known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States and its territories. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation. EPA is working to improve state and other stakeholder involvement to ensure that information is available to support Superfund listing determinations or other state or federal cleanup options.

Since state environmental agencies conduct roughly half of the Superfund site assessment reports completed each year, states' environmental staff are generally aware of specific site conditions as sites move towards the NPL listing phase. For those reports not produced by states, EPA routinely makes them available to the state partners so that both parties have the information necessary to hold collaborative discussions on the need for potential NPL listing. EPA intends to redouble its effort to make sure states, tribes, and other stakeholders are fully informed regarding EPA's NPL process.

**Next step:** EPA intends to address this programmatic concern through the ongoing Integrated Cleanup Initiative from the third quarter of fiscal year 2011 through the first quarter of FY 2012.

#### **2.1.7      Quick changes to some TSCA reporting requirements: reducing burden**

**Reason for inclusion:** EPA is developing a proposal to make a few quick changes to three existing reporting requirements under TSCA. The changes are intended to reduce reporting burdens and to clarify reporting to provide for more efficient review of health and environmental data and more effective protection of public health and the environment. This is consistent with EO 13563's directive to reduce regulatory burden.

**Background:** The anticipated changes involve 40 CFR 790.5, entitled "Submission of Information;" 40 CFR 792.185, entitled "Reporting of Study Results;" and 40 CFR 712.28, entitled "Forms and Instructions." The changes under consideration include:

- the elimination of the requirement for 6 copies to be submitted, replaced by submission of a single electronic copy;
- the addition of a requirement for including "Robust Summaries" of test results with the submission of test data; and
- the use of the Inventory Update Reporting Form to format the submission of preliminary assessment information in response to chemical information rules.

**Next step:** EPA expects to propose changes to reporting requirements by the end of 2011.

### **2.1.8      \*\* National Pollutant Discharge Elimination System (NPDES): coordinating permit requirements and removing outdated requirements**

**Reason for inclusion:** EPA intends to review the regulations that apply to the issuance of NPDES permits, which are the wastewater permits that facility operators must obtain before they discharge pollutants to any water of the United States. EPA intends to revise or repeal outdated or ineffective regulatory requirements for wastewater facilities, which is consistent with EO 13563's directive to "determine whether...regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome."

**Background:** EPA plans to review NPDES permitting regulations in order to find provisions that are outdated or ineffective. EPA expects the review to most likely focus on:

- a) eliminating inconsistencies between regulations and application forms;
- b) improving the consistency between the application forms;
- c) updating the application forms to address current program practices;
- d) clarifying the existing regulations and modifying or repealing permitting, monitoring, and reporting requirements that have become obsolete or outdated due to programmatic and technical changes that have occurred over the past 20 years; and
- e) modifying permit documentation and objection procedures to improve the quality and transparency of permit development.

As an example of an outdated regulation which could be changed to reduce burden, as well as improve transparency and public access to information, EPA is considering whether to revise the public notice requirements to allow a state to post notices and draft NPDES permits under the Clean Water Act on their state agency websites in lieu of traditional newspaper posting.

**Estimated potential cost or burden reduction:** EPA estimates that public notice of draft permits in newspapers for NPDES major facilities, sewage sludge facilities and general permits

currently costs approximately \$1.6 million per year<sup>15</sup> (this excludes the costs of preparing the content of the NPDES public notice, and the costs of the other methods to provide notice besides newspaper publication, such as direct mailing). Any savings from EPA's planned rule, however, are likely to be less than this amount. The new rule would allow, but not require states and the Federal Government to use electronic public notice instead of newspaper publication. Some states would continue to publish at least some notifications in newspapers. In addition, there would be offsetting costs to provide electronic notice, and EPA does not currently have estimates of those costs.

**Next step:** EPA expects to propose modifications to NPDES permit regulations by the end of 2011.

### **2.1.9      \*\*National primary drinking water regulations - Long Term 2 Enhanced Surface Water Treatment: evaluating approaches that may maintain, or provide greater, public health protection**

**Reason for inclusion:** EPA intends to evaluate effective and practical approaches that may maintain, or provide greater protection of, the water treated by public water systems and stored prior to distribution to consumers. EPA plans to conduct this review expeditiously to protect public health while considering innovations and flexibility as called for in EO 13563.

**Background:** The purpose of the Long Term 2 Enhanced Surface Water Treatment (LT2) rule is to reduce illness linked with the contaminant *Cryptosporidium* and other disease-causing microorganisms in drinking water. The rule supplements existing regulations by targeting additional *Cryptosporidium* treatment requirements to higher risk systems. This rule also contains provisions to reduce risks from uncovered finished water reservoirs and to ensure that systems maintain microbial protection when they take steps to decrease the formation of disinfection byproducts that result from chemical water treatment.

LT2 requires public water systems that store treated water in open reservoirs to either cover the reservoir or treat water leaving the reservoir to inactivate viruses, *Giardia*, and *Cryptosporidium*.<sup>16</sup> This requirement applies to all public water systems, regardless of what treatment or filtration methods are used, because the requirements address open reservoirs that store drinking water that has already been treated and is intended to be distributed directly to consumers without further treatment. The LT2 uncovered finished water reservoir requirement is intended to protect against the potential for re-contamination of treated water with disease causing organisms, specifically *Cryptosporidium*, *Giardia*, and viruses.

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<sup>15</sup> EPA used \$1,000 (in 2010\$) as the publication cost for a public notice in a newspaper. We assume that there are 1,600 NPDES permit actions that require public notice via newspaper publication each year; thus, we arrive at the \$1.6 million per year estimate.

<sup>16</sup> "National Primary Drinking Water Regulations: Long Term 2 Enhanced Surface Water Treatment Rule (Final Rule)." 71 FR 654 (5 January 2006). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2006-01-05/pdf/06-4.pdf>; Accessed: 08/15/11.

The 1996 Amendments to the Safe Drinking Water Act (SDWA) require EPA to review the existing national primary drinking water regulations at least every six years and revise the regulations as appropriate. Section 300g-1 specifies that any revision must maintain or provide for greater protection of the health of persons.<sup>17</sup> EPA plans to review the LT2 regulation as part of the upcoming Six Year Review process using the protocol developed for this effort. As part of the review, EPA would assess and analyze new data/information regarding occurrence, treatment, analytical methods, health effects, and risk from all relevant waterborne pathogens to evaluate whether there are new or additional ways to manage risk while assuring equivalent or improved protection, including with respect to the covering of finished water reservoirs. Also, EPA intends to explore best practices that meet the SDWA requirements to maintain or improve public health protection for drinking water, while considering innovative approaches for public water systems.

**Next step:** The review process for LT2 is expected to begin in 2011 when EPA begins to update the 6-year review protocol to address microbial issues. Further, EPA plans to hold stakeholder meetings on LT2 in 2012, and before the end of 2011 expects to issue a Federal Register notice with more information about these meetings.

#### **2.1.10      \*\* Combined Sewer Overflows (CSOs) and integrated planning for wet weather infrastructure investments: providing flexibilities**

**Reason for inclusion:** This review is included in the Plan so that EPA can gather additional information on how we can better promote Green Infrastructure (GI), ensure practical and affordable remedies to CSO violations, and identify additional approaches with accountability to ensure that communities can see noticeable improvements to their water quality and reduced risks to human health through prioritizing infrastructure investments. When consulting with the public as this Plan was developed, several commenters requested that EPA address CSOs.

**Background:** EPA believes that the incorporation of GI and other innovative approaches into CSO long term control plans can result in improved water quality while potentially saving taxpayers money when compared to traditional approaches and providing additional benefits to communities. Many communities are exploring and implementing GI solutions to help address their storm water and wastewater control needs. For example, New York and Philadelphia have developed GI plans and are discussing with EPA how these plans can best help to meet their wastewater management needs now and into the future. Some communities have also expressed an interest in evaluating CSO investments along with other wastewater and stormwater investments to determine the most cost effective approach to improving water quality.

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<sup>17</sup> 42 USC sec. 300g-1(b)(9) (2009). Note: Laws such as the Safe Drinking Water Act (SDWA) are codified in the *U.S. Code*. Some people may be more familiar with the public law citation for this section, which is SDWA Sec. 1412(b)(9). The text of 42 USC sec. 300g-1(b)(9) is available from: FDsys, <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap6A-subchapXII-partB-sec300g-1.pdf>; Accessed: 08/15/11.

**Next steps:** In fall 2011, EPA intends to initiate a process to conduct additional outreach with respect to how to improve the implementation of the CSO Policy. In particular, EPA intends to support and encourage the use of green infrastructure as part of an integrated approach to reduce stormwater flows in the CSO system and develop an approach for prioritizing wet weather investments into integrated permitting or other vehicles with accountability. In addition, EPA intends to consider approaches that allow municipalities to evaluate all of their CWA requirements and develop comprehensive plans to meet these requirements.

#### **2.1.11      \*\* Vehicle regulations: harmonizing requirements**

**Reason for inclusion:** EPA intends to review existing vehicle regulations for areas where greater harmonization with California and the U.S. Department of Transportation (DOT) can be achieved. This is in keeping with EO 13563's directive to achieve greater coordination across federal agencies to reduce redundant regulatory requirements.

**Background:** Activities to achieve greater harmonization among vehicle regulations include:

- **Vehicle greenhouse gas and fuel-economy standards compliance harmonization with DOT and CARB** – EPA and NHTSA are developing a joint rulemaking to propose greenhouse gas (GHG) and Corporate Average Fuel Economy (CAFE) standards for model years 2017-2025 light-duty vehicles. Harmonizing compliance could include streamlining reporting and credit trading systems and updating testing protocols to meet the needs of all three agencies. As part of this process, EPA and DOT intend to take comment on opportunities to further harmonize compliance requirements of the two agencies. This was recommended by an auto industry representative during the public comment process for this Plan.
- **Vehicle and fuel standards compliance harmonization with CARB** – EPA plans to assess and take comment on opportunities to harmonize testing and compliance requirements with CARB's vehicle emission standards. This review is expected to be done in conjunction with the rulemaking on the next set of vehicle and fuel standards, known as Tier 3 motor vehicle emission and fuel standards, informed by public comments received during the public outreach process.

**Next steps:** EPA intends to propose GHG standards in September 2011. Also, EPA expects to propose new vehicle and fuel standards in late 2011.

#### **2.1.12      Multiple air pollutants: coordinating emission reduction regulations and using innovative technologies**

**Reason for inclusion:** EPA intends to explore ways to reduce emissions of multiple air pollutants through the use of technologies and practices that achieve multiple benefits, such as controlling hazardous air pollutant emissions while also controlling particulate matter and its

precursor pollutants. This is in keeping with EO 13563's directives to harmonize related regulatory requirements and to promote innovation.

**Background:** EPA intends to issue a proposed rulemaking for the Maximum Achievable Control Technology (MACT) Risk and Technology Review for Pulp and Paper Industry (Subpart S). It is important that the Kraft NSPS and other MACT regulations for the pulp and paper industry be considered together to account for the interactions and collateral benefits or dis-benefits between the emitted criteria air pollutants and hazardous air pollutants (HAPs). Subpart S is under court ordered deadlines so coordination opportunities are limited. However, the greatest opportunity to address multiple air pollutants, enhance innovation, and reduce regulatory compliance efforts would be with a combined rulemaking where Kraft NSPS and Subpart MM regulations are considered together. Both regulations focus on combustion sources, and EPA intends for them to immediately follow the Subpart S rulemaking.

This industry-specific "sector approach" is intended to:

- Avoid "stranded" costs associated with piecemeal investment in control equipment for individual pollutants from multiple, successive rulemakings.
- Tailor results based on source-specific fuel inputs (e.g., non-condensable gases, wastewater treatment residuals) versus general inputs (e.g., coal, wood, oil, gas).
- Promote industry-specific technology-based solutions (e.g., energy efficiency).
- Provide flexibility in compliance alternatives.

EPA intends to take a similar approach for the chemical sector. We intend to perform a risk and technology review for the following MACT standards: miscellaneous organic national emission standards for hazardous air pollutants (MON), ethylene, pesticide active ingredients, polyether polyols, polymers and resins IV, and organic liquid distribution. We also intend to conduct the periodic technology review for the hazardous organic national emission standards for hazardous air pollutants (NESHAP) (HON). Furthermore, we are evaluating emissions from vinyl chloride facilities (covered by the HON) to see if additional emissions limitations are needed. Finally, we plan to review the five chemical sector NSPS and consolidate these requirements into a single sector rule. We currently plan to revise these MACT and NSPS rules to point to a set of uniform standards for equipment leaks, wastewater, tanks, control devices, and heat exchangers. Through this coordinated approach, we intend to establish consistent requirements across the entire chemical industry.

**Next step:** Proposed rules are anticipated in December 2011 for pulp and paper and November 2011 for the chemical industry rules.

### **2.1.13      \*\* New Source Performance Standards (NSPS) reviews and revisions under the CAA: setting priorities to ensure updates to outdated technologies**

**Reason for inclusion:** This review is included in the Plan to ensure that EPA prioritizes NSPS reviews to focus on those that, in keeping with EO 13563, promote innovative technologies while upholding EPA's mission to protect human health and the environment.

**Background:** The CAA requires EPA to review and update NSPS every eight years for over 70 different industrial source types. In conducting such reviews in the past, the usefulness of the reviews varied greatly across the different source types. For some source types, we have seen significant improvements in processes and emission control technologies, along with significant numbers of new sources. For others, we found little change in prevailing technologies and/or little growth in the industry. Accordingly, we intend to establish priorities for the review and revision of NSPS based on the opportunities for meaningful improvements in air quality and public health, giving lesser importance to those categories where little or no opportunity for such improvements realistically exists. This approach is intended to make the NSPS review process more efficient, so that both public and private resources can be focused where it makes the most sense.

**Next step:** EPA intends to issue an Advanced Notice of Proposed Rulemaking projected for summer of 2011 that presents an approach that includes a streamlined process to consider whether an NSPS requires a review. If the standard remains effective in meeting the requirements of the CAA, then we would not conduct a review and redirect both public and private resources to the rules that provide the greatest public health protection and are most likely to warrant revision.

#### **2.1.14      \*\* CAA Title V Permit programs: simplifying and clarifying requirements**

**Reason for inclusion:** EPA intends to review the Title V implementation process to determine whether changes can be made to simplify and clarify the process for industry, the public, and government resources, which is in keeping with EO 13563's directive to simplify regulatory requirements.

**Background:** Operating permits are legally enforceable documents that permitting authorities issue to air pollution sources after the source has begun to operate. As required under Title V of the CAA, most large sources and some smaller sources of air pollution are required to obtain an operating permit. A Title V permit lists all of the air quality-related rules and requirements that apply to the particular source, and specifies how compliance will be monitored. States are required to give public notice of the draft permits and some permit revisions, and typically post permits on their websites. This provides transparency in the permitting process and minimizes misunderstandings between the source, regulatory agencies, and the public living around the source.

The Title V program was the focus of many of the public comments received as part of the outreach EPA conducted as it developed this Plan. EPA continues to draw on the Title V implementation ideas generated by its Clean Air Act Advisory Committee (CAAAC), including those developed by a CAAAC task force in 2006.<sup>18</sup> Taking advantage of advice and ideas from

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<sup>18</sup> ---. Environmental Protection Agency. *Final Report to the Clean Air Act Advisory Committee: Title V Implementation Experience*. Washington: EPA, April 2006. Available from: the EPA website, [http://www.epa.gov/oar/caaac/tvtaskforce/title5\\_taskforce\\_finalreport20060405.pdf](http://www.epa.gov/oar/caaac/tvtaskforce/title5_taskforce_finalreport20060405.pdf); Accessed: 08/15/11.

all of these sources, EPA intends to review the Title V implementation process to determine whether changes can be made to help all permitting participants understand the program better. EPA also intends to streamline the process to be more efficient in terms of industry, public, and government resources. Among other things, EPA may consider electronic filing of applications, including supporting material such as reports.

**Estimated potential cost or burden reduction:** Although potential cost reductions associated with this action cannot be predicted until the areas for improvement are identified, EPA believes the improvements will reduce burden on the public, the permitting agencies and the permittees. The changes are intended to also increase transparency in the process as well as give greater certainty to the permittees. EPA recently completed a rulemaking to help streamline the implementation of the Title V program which resulted in an estimated total annual cost savings of approximately \$32,000,000 (2010\$).<sup>19</sup> This action should realize a benefit of \$200 to \$300 per permit revision when fully implemented, or approximately \$3,000,000 to \$5,000,000 (2010\$) for each cycle of permit renewal nationally.

**Next step:** EPA intends to begin the review process to implement this recommendation during the fall/winter of 2011.

#### **2.1.15 Innovative technology: seeking to spur new markets and utilize technological innovations**

**Reason for inclusion:** This review is part of the Plan to evaluate how best EPA can “seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation” per EO 13563.

**Background:** Available and affordable technology choices define the potential range of environmental solutions for many environmental problems. Moreover, technology innovation can lead not only to better environmental outcomes, but better economic opportunities and outcomes, too. EPA efforts in the past 40 years have spurred technology developments responsible for profound improvements in environmental protection through preventing, reducing, and sequestering pollutants, and monitoring environmental conditions. EPA has a number of efforts underway to promote innovative technology including the following:

- During retrospective reviews and new rulemakings, EPA intends to assess innovative technology to help encourage continued development of new sustainable technologies to achieve improved environmental results at lower costs. Such innovative technologies

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<sup>19</sup> As an example of potential cost savings associated with this review, EPA considered an existing rule that was implemented as a result of recommendations made by the 2006 Clean Air Act Advisory Committee (CAAAC) Task Force. The Flexible Air Permitting rule (FAP), implemented in October 2009 (74 FR 51418 (October 06, 2009)), available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2009-10-06/pdf/E9-23794.pdf>), revises the air permitting program under Title V. This final rule is illustrative of the policy improvements that the retrospective review aims to achieve, as it clarifies existing requirements and allows regulated entities to seek additional flexibility for their Clean Air Act permits.

will foster new market opportunities for green technology and infrastructure and will also provide new opportunities for the creation of more flexible and cost-effective means of compliance. The first step in this process is to conduct a technology opportunity and market assessment of two pending regulations in order to begin developing a framework for considering such information during the regulatory process.<sup>20</sup>

- Monitoring and testing certification procedures and regulations are often codified and then, over time, can become outdated. Where feasible, EPA plans to continue to make changes to update monitoring and testing protocols through flexible approaches such as alternative method approval procedures, which can allow more immediate use of new methods based on new scientifically sound technology that meet legally supported criteria. In future rulemakings, EPA intends to continue to augment codified protocols by utilizing established requirements, such as the National Technology Transfer Advancement Act, to add by reference, methods developed by voluntary consensus organizations, where appropriate.
- EPA has taken steps already to support technological innovation in the water sector through cooperation with a newly formed regional water technology cluster. The water technology innovation cluster intends to develop and commercialize innovative technologies to solve environmental challenges and spur sustainable economic development and job growth through the expansion, creation, and attraction of water technology companies and investment. EPA co-hosted a workshop with the regional Water Technology Innovation Cluster (WTIC) on May 23, 2011, where the Agency worked to identify major challenges and technology needs faced by the different water sectors.

**Next steps:** EPA intends to begin a technology opportunity and market assessment of two regulations by the end of fiscal year 2011.

#### **2.1.16      \*\* The costs of regulations: improving cost estimates**

**Reason for inclusion:** EPA intends to evaluate why and to what degree compliance cost estimates developed prior to the issuance of a regulation (ex-ante compliance costs) differ from actual compliance costs realized after a regulation takes effect (ex-post compliance costs). EO 13563 requires each agency to use the best available techniques to quantify anticipated, present, and future costs of its regulations as accurately as possible. The overall goal of this project is to improve EPA's ability to estimate ex-ante compliance costs to increase regulatory efficiency.

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<sup>20</sup> For more information, see EPA's FY 2011 Strategic Action Plan for Advancing Science, Research and Technological Innovation. Citation: ---. Environmental Protection Agency. "Advancing Science, Research, and Technological Innovation," in *FY2011 – 2015 EPA Strategic Plan*, pp. 32 – 33. (Publication No. EPA-190-B-10-002). Washington, EPA: September 2010. Available from: the EPA website, <http://www.epa.gov/planandbudget/strategicplan.html>; Accessed: 08/15/11.

**Background:** EPA intends to explore, through an analysis initially focusing on 5 rules, possible sources of uncertainty and reasons why ex-ante cost estimates and estimates of ex-post costs diverge. One of the goals of the project is to determine if any systematic biases exist in EPA’s ex-ante cost estimates, and if so, why. One potentially important reason for the difference between ex-ante and ex-post costs is unanticipated technological innovation that occurs between the time a rule is promulgated and when the regulated community must begin complying with the regulation. While we recognize that benefits estimates may also change as a result of technological innovation, we will focus our analysis here on costs with the overall goal of identifying ways EPA can improve estimates of compliance costs to better inform regulation.

The five rules included in this study are:

- National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring;<sup>21</sup>
- National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper, and Paperboard Category;<sup>22</sup>
- Revision of Standards of Performance for Nitrogen Oxide Emissions From New Fossil-Fuel Fired Steam Generating Units; Revisions to Reporting Requirements for Standards of Performance for New Fossil-Fuel Fired Steam Generating Units;<sup>23</sup>
- Emission Standards for Locomotives and Locomotive Engines;<sup>24</sup> and
- Methyl Bromide Critical Use Nomination for Preplant Soil Use for Strawberry Fruit Grown in Open Fields (Submitted in 2003 for the 2006 Use Season).<sup>25</sup>

**Next step:** The Agency plans to complete a draft report on the first five rules by fall 2011.

## 2.2 Longer term actions

The 19 regulatory reviews listed here are part of EPA’s initial list of 35 priority regulatory reviews. These actions are on a longer term schedule relative to the early actions listed in the previous section. Descriptions for each follow. Asterisks (\*\*) preceding the heading of a review

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<sup>21</sup> “National Primary Drinking Water Regulations; Arsenic and Clarifications to Compliance and New Source Contaminants Monitoring (Final Rule).” 66 FR 6976 (January 22, 2001). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2001-01-22/pdf/01-1668.pdf>; Accessed: 08/15/11.

<sup>22</sup> “National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper, and Paperboard Category: Final Rules.” 63 FR 18504 (April 15, 1998). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-1998-04-15/pdf/98-9613.pdf>; Accessed: 08/15/2011.

<sup>23</sup> “Revision of Standards of Performance for Nitrogen Oxide Emissions From New Fossil-Fuel Fired Steam Generating Units; Revisions to Reporting Requirements for Standards of Performance for New Fossil-Fuel Fired Steam Generating Units: Final Rule.” 63 FR 49442 (September 16, 1998). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-1998-09-16/pdf/98-24733.pdf>; Accessed: 08/15/2011.

<sup>24</sup> “Emission Standards for Locomotives and Locomotive Engines: Final Rule.” 63 FR 18978 (April 16, 1998). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-1998-04-16/pdf/98-7769.pdf>; Accessed: 08/15/2011.

<sup>25</sup> “Protection of Stratospheric Ozone: Process for Exempting Critical Uses From the Phaseout of Methyl Bromide.” 69 FR 76982 (December 23, 2004). Available from FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2004-12-23/pdf/04-27905.pdf>; Accessed: 08/15/2011.

indicate those reviews which were suggested during the public comment periods held for this Plan.

1. Vehicle fuel vapor recovery systems: eliminating redundancy
2. \*\* New Source Performance Standards (NSPS) under the CAA for grain elevators, amendments: updating outmoded requirements and relieving burden
3. \*\* Sanitary Sewer Overflow (SSO) and peak flow wet weather discharges: clarifying permitting requirements
4. \*\* E-Manifest: reducing burden
5. Electronic hazardous waste Site ID form: reducing burden
6. \*\* Consumer confidence reports for primary drinking water regulations: providing for the open exchange of information
7. \*\* Reporting requirements under Section 303(d) of the Clean Water Act (CWA): reducing burden
8. \*\* Export notification for chemicals and pesticides: reducing burden and improving efficiencies
9. \*\* Water quality trading: improving approaches
10. \*\* Water quality standard regulations: simplifying and clarifying requirements
11. \*\* State Implementation Plan (SIP) process: reducing burden
12. \*\* National primary drinking water regulations for lead and copper: simplifying and clarifying requirements
13. Adjusting threshold planning quantities (TPQs) for solids in solution: reducing burden and relying on scientific objectivity
14. Integrated pesticide registration reviews: reducing burden and improving efficiencies
15. \*\* Certification of pesticide applicators: eliminating uncertainties and improving efficiencies
16. \*\* Polychlorinated biphenyls (PCB) reforms: improving efficiencies and effectiveness
17. \*\* Hazardous waste requirements for retail products: clarifying and making the program more effective
18. Contaminants under the Safe Drinking Water Act (SDWA): coordinating regulatory requirements
19. \*\*Section 610 reviews: coordinating requirements

### **2.2.1 Vehicle fuel vapor recovery systems: eliminating redundancy**

**Reason for inclusion:** This ongoing retrospective review is included in the Plan because EPA intends to seek burden reductions for gas stations by eliminating regulatory requirements that call for the use of redundant technology. This review is in keeping with EO 13563's directive to eliminate redundant requirements.

**Background:** Onboard refueling vapor recovery technology on today's gasoline-powered vehicles effectively controls harmful air emissions as cars and trucks refuel, thereby eliminating the need for controls at the gas pump. This ongoing review is intended to eliminate the gas

dispenser-based vapor control requirements that have become redundant due to this onboard technology, and thereby relieve states of the obligation to require pump-based Stage II vapor recovery systems at gasoline stations. EPA issued a proposed rule on July 15, 2011.<sup>26</sup>

**Estimated potential cost or burden reduction:** Taking into consideration the costs associated with the removal of vapor recovery equipment and the use of less expensive conventional equipment on the gasoline dispensers, as well as the reductions in record-keeping requirements and other operating costs, EPA estimates the long-term cost savings associated with this rule to be approximately \$87 million per year (2010\$).

**Next step:** EPA intends to issue a final rule in summer 2012.

### 2.2.2      \*\*<sup>27</sup> **New Source Performance Standards (NSPS) under the CAA for grain elevators, amendments: updating outmoded requirements and relieving burden**

**Reason for inclusion:** This review is part of the Plan because EPA intends to evaluate the technology that is used to determine the regulation's stringency, in keeping with EO 13563's directive to revise or repeal outmoded or burdensome regulatory requirements.

**Background:** EPA is undertaking this review in response to comments from the NSPS Subpart DD Coalition, which is made up of six organizations: the Corn Refiners Association, the North American Millers' Association, the National Council of Farmer Cooperatives, the National Grain and Feed Association, the National Oilseed Processors Association, the USA Rice Federation, and the National Oilseed Processors Association. The comments call on EPA to review the NSPS for grain elevators which was promulgated in 1978 and last reviewed in 1984. The Coalition comments that the basis EPA used to determine applicability and rule stringency have changed fundamentally, and that a review is needed.

EPA agrees that since promulgation there have been a number of changes in the technology used for storing and loading/unloading grain at elevators. Moreover, the rule has seen increased activity of late, due to the increase in ethanol production that has led to increased corn production and grain storage. For these reasons, EPA intends to review the existing NSPS for grain elevators to ensure the appropriate standards are being applied consistently throughout the industry.

**Next step:** We expect to propose amendments by December 2012.

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<sup>26</sup> "Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver (Proposed Rule)." 76 FR 41731 (July 15, 2011). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2011-07-15/pdf/2011-17888.pdf>; Accessed: 08/15/11.

<sup>27</sup> Asterisks (\*\*) preceding the heading of a review indicate those reviews which were suggested during the public comment period held for this Plan.

### 2.2.3      \*\* Sanitary Sewer Overflow (SSO) and peak flow wet weather discharges: clarifying permitting requirements

**Reason for inclusion:** This review is included in the plan so that EPA can gather additional information about the most effective way to manage wastewater that flows through municipal sewage treatment plants during heavy rains or other wet weather periods that cause an increase in the flow of water (these are collectively known as “peak flows”). EPA intends to evaluate options that are appropriate for addressing Sanitary Sewer Overflows (SSOs) and peak flow wet weather discharges and determine if a regulatory approach, voluntary approach, or other approach is the best path forward. This is consistent with EO 13563’s directive to clarify regulatory requirements.

**Background:** During periods of wet weather, wastewater flows received by municipal sewage treatment plants can significantly increase, which can create operational challenges for sewage treatment facilities. Where peak flows approach or exceed the design capacity of a treatment plant they can seriously reduce treatment efficiency or damage treatment units.

One engineering practice that some facilities use to protect biological treatment units from damage and to prevent overflows and backups elsewhere in the system is referred to as “wet weather blending.” Wet weather blending occurs during peak wet weather flow events when flows that exceed the capacity of the biological units are routed around the biological units and blended with effluent from the biological units prior to discharge. Regulatory agencies, sewage treatment plant operators, and representatives of environmental advocacy groups have expressed uncertainty about National Pollutant Discharge Elimination System (NPDES) requirements concerning peak flows.

In June and July 2010, EPA held listening sessions to gather information on issues associated with SSOs and peak flow wet weather discharges.<sup>28</sup> EPA received extensive verbal and written comments. Subsequently, EPA held a stakeholder workshop on July 14 and 15, 2011,<sup>29</sup> in which designated representatives from the following stakeholder organizations participated in a facilitated discussion on the issues most important to them in regulating SSOs and peak flow discharges:

- Association of State and Interstate Water Pollution Control Administrators,
- National Association of Clean Water Agencies,
- American Rivers,
- Natural Resources Defense Council,
- Cahaba River Society, and

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<sup>28</sup> “Stakeholder Input; National Pollutant Discharge Elimination System (NPDES) Permit Requirements for Municipal Sanitary Sewer Collection Systems, Municipal Satellite Collection Systems, Sanitary Sewer Overflows, and Peak Wet Weather Discharges From Publicly Owned Treatment Works Treatment Plants Serving Separate Sanitary Sewer Collection Systems (Notice).” 75 FR 30395 (June 01, 2010). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2010-06-01/pdf/2010-13098.pdf>; Accessed: 08/15/11.

<sup>29</sup> “Notice of EPA Workshop on Sanitary Sewer Overflows and Peak Wet Weather Discharges; Notice,” 76 FR 35215 (June 16, 2011). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2011-06-16/pdf/2011-15003.pdf>; Accessed: 08/15/11.

- Water Environment Federation.

In addition to the designated representatives, over 70 members of the public attended the workshop.

The workshop provided representatives of key stakeholder groups an opportunity to provide their view on potential NPDES requirements for SSOs and peak flows at publicly owned treatment works (POTWs) served by sanitary sewers. All of the representatives at the workshop supported an EPA rulemaking to clarify NPDES permit requirements for SSOs that addressed reporting; recordkeeping; public notice; capacity, management, operation and maintenance (CMOM) programs; and requirements for municipal satellite collection systems. While there was agreement on core provisions that should be included in NPDES permits and the need to regulate municipal satellite collection systems, stakeholders had differing views on a number of issues, including which if any basement backups should be reported, whether to excuse or allow SSOs caused by extreme events, and the appropriate role of peak excess flow treatment facilities located in the collection system. Stakeholders also discussed the use of high-efficiency side-treatment of wet weather diversions around secondary treatment units.

**Next Step:** By summer 2012, EPA intends to consider the comments received from our workshop participants in determining next steps.

#### 2.2.4      \*\* E-Manifest: reducing burden

**Reason for inclusion:** EPA is exploring ways to reduce burden for hazardous waste generators, transporters, and permitted waste management facilities by transitioning from a paper-based reporting system to electronic reporting. This is consistent with EO 13563's directive to reduce regulatory burden.

**Background:** Currently, hazardous waste generators, transporters, and permitted waste management facilities must complete and carry a 6-ply paper manifest form as the means to comply with the "cradle-to-grave" tracking requirements required for off-site hazardous waste shipments under Section 6922(a)(5) of the Resource Conservation and Recovery Act (RCRA) statute.<sup>30</sup> EPA and our stakeholders advocate developing electronic hazardous waste manifesting services that EPA would host as a national system. This electronic system would allow stakeholders the option of using electronic manifests in lieu of the current 6-ply paper forms. Stakeholders recommended in 2004 that EPA develop a national electronic manifest system hosted by the Agency as a means to implement a consistent and secure approach to completing, submitting, and keeping records of hazardous waste manifests electronically.

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<sup>30</sup> 42 USC sec. 6299(a)(5) (2009). Note: Laws such as RCRA are codified in the *U.S. Code*. Some people may be more familiar with the public law citation for this section, which is RCRA Sec. 3002(a)(5). The text of 42 USC sec. 6299(a)(5) is available from: FDsys, <http://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/pdf/USCODE-2009-title42-chap82-subchapIII-sec6922.pdf>; Accessed: 08/15/11.

Electronic manifests could be downloaded to mobile devices, and tracking data distribution could be carried out electronically. Waste handlers could accomplish nearly real-time tracking of waste shipments, EPA and states could maintain more effective oversight of hazardous waste shipments, data quality and availability would be greatly improved, and the Agency could collect and manage manifest data and Biennial Reporting data much more efficiently. The hazardous waste industry is on record supporting a user fee funded approach to developing and operating the e-Manifest system, and the Administration supports establishing an e-Manifest system.

**Estimated potential cost or burden reduction:** The development of a national e-Manifest system would entail total intramural and extramural system development costs ranging from \$11.5 million to \$20.7 million, depending on the chosen system design. For EPA's preferred system design option, involving mobile PC devices that link to and exchange manifest data with a national system, system development costs would total about \$11.3 million (2010\$) and average annual operation and maintenance costs would total about \$3.6 million (2010\$). EPA believes that such a system would produce annual savings to waste handlers and regulators ranging between \$76 million and \$124 million (2010\$).

**Next steps:** In the FY 2012 President's Budget EPA requested \$2 million to begin the development of an electronic hazardous waste manifest system. The Administration also submitted to Congress a legislative proposal to collect user fees to support the development and operation of this system. As part of the regulatory review plan, EPA proposes including the efforts to finalize the rule that will allow tracking of hazardous waste using the electronic manifest system.

## **2.2.5 Electronic hazardous waste Site ID form: reducing burden**

**Reason for inclusion:** EPA is exploring ways to reduce burden for hazardous waste generators, transporters, and permitted waste management facilities by transitioning from a paper-based site ID application system to an electronic application system. This is consistent with EO 13563's directive to reduce regulatory burden.

**Background:** RCRA requires individuals who (1) generate or transport hazardous waste or (2) operate a facility for recycling, treating, storing, or disposing of hazardous waste, to notify EPA or their authorized state waste management agency of their regulated waste activities and obtain a RCRA Identification (ID) Number. The RCRA ID Number is a unique identification number, assigned by EPA or the authorized state waste management agency, to hazardous waste handlers (see categories described above) to enable tracking of basic site information and regulatory status.

Currently, the Hazardous Waste Site ID form is an electronically-fillable PDF form. However, after a facility types in their information, the facility must print the form, sign it, and then mail it to the state or EPA Region. This is because the Site ID form requires a facility operator's wet signature. Similar to submitting tax forms online, this process can be streamlined if EPA can enable Site ID forms to be signed and submitted electronically. Electronically submitting Site ID forms would: 1) save in mailing costs; 2) enable better data quality as the data would be entered by the facility itself; 3) increase efficiency of the notification process as the facility could easily

review its past submissions and submit updates to the Site ID form (rather than repeatedly filling out the form again and again); and 4) enable states and EPA to receive the updated data faster.

As every Small Quantity Generator facility; Large Quantity Generator (LQG) facility; and Treatment, Storage, and Disposal (TSD) facility is required to use the Site ID form to obtain an EPA ID number and to submit changes to facility information, electronically submitting Site ID forms could potentially impact 50,000-100,000 facilities nationwide. In 2010, there were 97,610 submissions. As part of the Biennial Report, LQG and TSD facilities have to re-notify every two years. State renewals are state-specific, but it is noted that several states require annual re-notifications.

**Next step:** EPA estimates an electronic Site ID form could be implemented within a year after the decision is made to move forward.

#### **2.2.6      \*\* Consumer confidence reports for primary drinking water regulations: providing for the open exchange of information**

**Reason for inclusion:** This action is included in the Plan so that EPA can explore ways to promote greater transparency and public participation in protecting the Nation's drinking water, in keeping with EO 13563's directive to promote participation and the open exchange of information.

**Background:** Consumer Confidence Reports are a key part of public right-to-know in the SDWA. The Consumer Confidence Report, or CCR, is an annual water quality report that a community water system is required to provide to its customers. Community Water Systems (CWSs) serving more than 10,000 persons are required to mail or otherwise directly deliver these reports. States may allow CWSs serving fewer than 10,000 persons to provide these reports by other means. The report lists the regulated contaminants found in the drinking water, as well as health effects information related to violations of the drinking water standards. This helps consumers make informed decisions.

As stakeholders discussed during the development of this Plan, there has been a major increase and diversity in communication tools since 1998. EPA will consider reviewing the Consumer Confidence Report Rule to look for opportunities to improve the effectiveness of communicating drinking water information to the public, while lowering the burden of water systems and states. One example suggested by water systems is to allow electronic delivery through e-mail, thereby reducing mailing charges. This may also improve the readership of CCRs.

**Estimated potential cost or burden reduction:** EPA estimates a cost savings of approximately \$1,000,000 (2010\$) per year, based on the anticipated reduction in postage and paper costs for systems serving  $\geq 10,000$  customers.<sup>31</sup>

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<sup>31</sup> "Agency Information Collection Activities; Proposed Collection; Comment Request; Public Water System Supervision Program (Renewal); EPA ICR No. 0270.43, OMB Control No. 2040-0090," 73 FR 32325 (June 6, 2008). Available from FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2008-06-06/pdf/E8-12709.pdf>; Accessed: [cont'd. on next page]

**Next step:** EPA estimates that a retrospective review of the CCR could be completed within 12-16 months after the review cycle begins in fiscal year 2012.

### **2.2.7      \*\* Reporting requirements under Section 303(d) of the Clean Water Act (CWA): reducing burden**

**Reason for inclusion:** EPA intends to explore ways to reduce the burden on state governments when reporting on the quality of the Nation's water bodies, per EO 13563's directive to reduce regulatory burden.

**Background:** On April 1 of every even numbered year, states report to EPA on the status of the nation's waters to fulfill reporting requirements under CWA sections 303(d) and 305(b). The requirement for states to report on the condition of their waters every two years under Section 305(b) is statutory. However, the requirement for states to identify impaired waters that need a Total Maximum Daily Load (TMDL) every two years under Section 303(d) is regulatory. States have raised concerns that reporting this information every two years is a significant administrative burden.

**Next step:** EPA intends to work with the public and states to identify alternative approaches for reducing the burden associated with water quality reporting requirements and to evaluate the impact of changing this reporting cycle under either or both CWA Sections 303(d) and 305(b). EPA plans to review this activity by June 2012.

### **2.2.8      \*\* Export notification for chemicals and pesticides: reducing burden and improving efficiencies**

**Reason for inclusion:** EPA intends to explore ways to reduce regulatory burden on pesticide exporters and the foreign countries monitoring the exports, in keeping with EO 13563's directive to reduce regulatory burden.

**Background:** The regulations issued pursuant to Section 12(b) of TSCA specify export notification requirements for certain chemicals subject to regulation under TSCA Sections 4, 5, 6, and 7. The purpose of the export notification requirements of Section 12(b) of TSCA is to ensure that foreign governments are alerted when EPA takes certain regulatory actions on chemical substances being exported from the United States to those foreign countries, and to communicate relevant information concerning the regulated chemicals. In addition, Section 17(a) of FIFRA requires that the foreign purchaser of a pesticide that is not registered by EPA sign a statement, prior to export, acknowledging that the purchaser understands that the pesticide

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08/15/11. The total annual cost estimate of delivering CCRs as bill inserts for systems serving  $\geq 10,000$  customers was reported in 2007\$ and adjusted for inflation with the GDP deflator, providing a total annual cost estimate of \$1 million (2010\$). This figure is considered potential cost savings, because water systems could avoid these paper delivery expenses as a result of electronic CCR reporting.

is not registered for use in the United States and cannot be sold in the United States. The purpose of the export notification requirements of Section 17(a) is to ensure that foreign purchasers and the regulatory authorities in the importing country know these pesticides do not have an EPA registration; EPA registration carries a high degree of significance in other countries. Under both the TSCA and FIFRA regulations, the export notifications must be transmitted to an appropriate official of the government of the importing country, and is intended to provide them with notice of the chemical's export and other relevant information, e.g. the chemical's regulatory status in the U.S. and whether other information is available about the chemical.

During the public involvement process for this Plan, industry reported that these export notification requirements have resulted in a significant, and growing, number of export notifications, which is burdensome both for them, and also for EPA and the receiving foreign countries. Yet industry suggested that these requirements do not appear to provide comparable benefits to public health or the environment.

EPA intends to review the implementing regulations to determine whether there are any opportunities to reduce overall burden on exporters, the Agency, and receiving countries, while still ensuring that the statutory mandates are followed. For example, EPA is considering whether some or all of the transaction could be accomplished through electronic media and whether other changes to the process could provide efficiencies that would benefit all parties.

**Next step:** EPA is currently developing a workplan for completing this review effort within the next 12 months. The Agency intends to identify a timeline and process for engaging stakeholders in this review.

### 2.2.9      \*\* Water quality trading: improving approaches

**Reason for inclusion:** EPA intends to review the 2003 Water Quality Trading Policy to determine whether revisions could help increase adoption of market-based approaches, in which trading is a leading example, to increase the implementation of cost-effective pollutant reductions. This is in keeping with EO 13563's directive to reduce burden and the principle of maximizing net benefits.

**Background:** In 2003, EPA issued its final Water Quality Trading Policy,<sup>32</sup> which provides a framework for trading pollution reduction credits to promote cost-effective improvements in water quality, consistent with the goals and requirements of the Clean Water Act (CWA). This policy has been a success in encouraging states and stakeholders to give greater attention to market-based approaches for achieving water quality-based pollutant reductions beyond the technology-based requirements of the Act, as well as ancillary environmental benefits including carbon sequestration, habitat protection, and open space preservation. Based upon public input

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<sup>32</sup> See EPA's 2003 Water Quality Trading Policy. Citation: ---. Environmental Protection Agency. "Water Quality Trading Policy." Washington: EPA, January 13, 2003. Available from: the EPA website, <http://water.epa.gov/type/watersheds/trading/tradingpolicy.cfm>; Accessed: 08/15/11.

and EPA's support and review of water quality trading programs over the past eight years, EPA believes that significant, cost-effective pollutant reductions, particularly from non-point sources, remain untapped, and will explore ways to revise the policy to reflect new understanding and innovation. One area of innovation being considered by many stakeholders is stormwater trading.

EPA intends to begin this process with a workshop or other forum to solicit ideas from the public on barriers to trading and other market-based approaches under the current policy, and ways to reduce these barriers.

**Next step:** EPA intends to begin this process with a workshop or other forum to be held in 2012.

### **2.2.10      \*\* Water quality standard regulations: simplifying and clarifying requirements**

**Reason for inclusion:** EPA intends to review water quality standard (WQS) regulations to identify ways to improve the Agency's effectiveness in helping restore and maintain the Nation's waters and to simplify standards. This is consistent with EO 13563's directive to simplify regulatory requirements.

**Background:** Water Quality Standards are the foundation of the water quality-based pollution control program mandated by the Clean Water Act. The WQS define the goals for a waterbody by [designating its uses](#), [setting criteria](#) to protect those uses, and establishing provisions such as [antidegradation policies](#) to protect waterbodies from pollutants. Since the current WQS regulation was last revised in 1983, a number of issues have been raised by stakeholders or identified by EPA in the implementation process that could benefit from clarification and greater specificity. The proposed rule is expected to provide clarity in six key program areas (summarized in greater detail below), and EPA intends to better achieve program goals by providing enhanced water resource protection and clearer and simplified requirements.

Key policy issues associated with the action:

- 1. Administrator's determination that new or revised WQS are necessary:** Establish a more transparent process for the Administrator to announce a determination that new or revised WQS are necessary under Section 303(c)(4)(B) of the Act.
- 2. Designated uses:** Ensure states and tribes are striving to meet water quality goals even where full attainment of Clean Water Act standards is unattainable.
- 3. Triennial review requirements:** Ensure states' and tribes' WQS are continuously updated and reflect EPA's latest criteria recommendations.
- 4. Antidegradation:** Enhance state and tribal implementation of antidegradation and help better maintain and protect high quality waters.
- 5. Variances to WQS:** Provide regulatory flexibility and boundaries to allow states and tribes to achieve water quality improvements before resorting to a use change.
- 6. Authorizing compliance schedules:** Clarify that, in order to issue compliance schedules, states and tribes must first authorize compliance schedules in their WQS.

**Next step:** EPA intends to propose a targeted set of revisions to the WQS regulation in early winter 2011/2012, and a final rulemaking in early summer 2012.

### 2.2.11 \*\* State Implementation Plan (SIP) process: reducing burden

**Reason for inclusion:** EPA intends to reduce hard copies, ensure that certain hearings are held only when needed, minimize the number of expensive newspaper advertisements providing public notice, and explore the potential for certain regulatory changes to be made with less process. This is in keeping with EO 13563's directive to reduce regulatory burden. The improvements to the SIP development process that are under consideration as a result of these actions are expected to reduce cost and burden to states and EPA Regional Offices. These actions should help to simplify the process, and are expected to conserve state and federal resources. Improvements such as reduced newspaper publication and hard copy submittals, elimination of unnecessary public hearings, and increased use of letter notices are expected to result in an ongoing cost savings. To the extent that final decisions on SIPs are made more quickly as a result of the process improvements, they are expected to provide greater certainty to stakeholders and to the general public.

**Background:** EPA and states are working together to review the administrative steps that states must follow when they adopt and submit plans to meet the requirements of the Clean Air Act. These plans describe how areas with air quality problems will attain and maintain the National Ambient Air Quality Standards.

EPA recently shared a number of simplifying changes to SIPs with the states via guidance.<sup>33</sup> These changes will minimize or eliminate (1) formal hearings on matters of no public interest, (2) expensive advertisements in newspapers with low readership, and (3) shipment of multiple hard copies of documents. Additionally, a state-EPA working group is considering (1) training tools that would assist states developing nonattainment SIPs for the first time, and (2) ways to provide states with information that will better equip them to deal with SIPs (e.g. SIP status/approval information, information on innovative measures).

We are also considering additional changes:

- Exploring options for reducing the paper submittals of SIP revisions in favor of electronic submittals.
- Determining whether and how the process for making minor plan revisions might be simplified.

**Next step:** The timeframes for these milestones will be determined at a later date.

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<sup>33</sup> "Regional Consistency for the Administrative Requirements of State Implementation Plan Submittals and the Use of "Letter Notices," April 6, 2011 (Memorandum from Office of Air and Radiation Deputy Assistant Administrator Janet McCabe to EPA Regional Administrators)." Available from: the EPA website. <http://www.epa.gov/glo/pdfs/20110406mccabetoRAs.pdf>; Accessed 08/15/11.

## 2.2.12      **\*\* National primary drinking water regulations for lead and copper: simplifying and clarifying requirements**

**Reason for inclusion:** Efforts to revise the Lead and Copper Rule (also referred to as the LCR) have been ongoing but this review is part of the Plan because EPA intends to seek ways to simplify and clarify requirements imposed on drinking water systems to maintain safe levels of lead and copper in drinking water. This is in keeping with EO 13563's directive to simplify regulatory requirements.

**Background:** On June 7, 1991, EPA published LCR to control lead and copper in drinking water.<sup>34</sup> The treatment technique for the rule requires community water systems and non-transient non-community water systems to monitor drinking water at customer taps. If lead and copper concentrations exceed action levels in more than 10% of customer taps sampled, the system must undertake a number of additional actions to reduce lead levels. If the action level for lead is exceeded, the system must also inform the public about steps they should take to protect their health.

While LCR is an important means for reducing children's exposure to lead, stakeholders have commented that the rule is hard to understand and implement. Under the LCR review, EPA has been evaluating ways to improve public health protections provided by the rule as well as streamline rule requirements by making substantive changes based on topics that were identified in the 2004 National Review of the LCR.

**Next step:** EPA currently expects to issue a proposed rulemaking in 2012.

## 2.2.13      **Adjusting threshold planning quantities (TPQs) for solids in solution: reducing burden and relying on scientific objectivity**

**Reason for inclusion:** EPA intends to revise TPQs for chemicals that are handled as non-reactive solids in solution. EPA is undertaking this review in order to align regulatory requirements with best available science and reduce regulatory burden, as called for in EO 13563.

**Background:** The extremely hazardous substances (EHSs) list and its TPQs, developed pursuant to the Emergency Planning and Community Right-to-Know Act (EPCRA), are intended to help communities focus on the substances and facilities of most immediate concern for emergency planning and response.<sup>35</sup> EPA is considering an alternative approach for the TPQs for chemicals on the EHSs list that are handled as non-reactive solids in solution. EPA is pursuing this approach in part based on industry's request to revisit the TPQ rationale for the chemical

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<sup>34</sup> ---. Environmental Protection Agency. "Lead and Copper Rule: A Quick Reference Guide." (Publication No. EPA-816-F-08-018). Washington: EPA, June 2008. Available from: the EPA website, [http://water.epa.gov/lawsregs/rulesregs/sdwa/lcr/upload/LeadandCopperQuickReferenceGuide\\_2008.pdf](http://water.epa.gov/lawsregs/rulesregs/sdwa/lcr/upload/LeadandCopperQuickReferenceGuide_2008.pdf); Accessed: 08/15/11.

<sup>35</sup> More information about TPQs for EHSs: [http://www.epa.gov/oem/content/epcra/epcra\\_ammend.htm](http://www.epa.gov/oem/content/epcra/epcra_ammend.htm).

paraquat dichloride (handled as a solid in aqueous solution). These regulatory revisions reflect EPA's use of best current science, and offer streamlining for facilities while maintaining environmental safeguards since solids in solutions are less likely to be dispersed into the air in event of an accidental release and have less impact on the off-site community.

**Next step:** EPA intends to complete a final rule by fall 2012.

#### **2.2.14 Integrated pesticide registration reviews: reducing burden and improving efficiencies**

**Reason for inclusion:** EPA is reviewing the pesticide registration process, outlined in Section 3 of FIFRA, as well as other FIFRA requirements, in order to achieve efficiencies for pesticide producers and other registrants, the public, and the Agency, in keeping with EO 13563's directive to relieve regulatory burden.

**Background:** Under the FIFRA, EPA reviews all current pesticide registrations every 15 years to ensure they continue to meet the protective FIFRA standard in light of new information and evolving science. To efficiently manage this very large effort, we are bundling chemicals by classes of pesticides with similar modes of operation or uses (e.g., neonicotinoids, pyrethroids). This has significant efficiency benefits for registrants, the public, and EPA, such as:

- **Cost savings resulting from evaluating similar chemicals at the same time** – Instead of EPA reviewing data and developing multiple independent risk assessments for individual chemicals, a number of similar chemicals can be cost-effectively evaluated at the same time. Registrants have greater certainty of a “level playing field” as the policies and state-of-the-science are the same at the time all of the pesticides in a class are evaluated. Registrants can form task forces to share the cost of producing data and to negotiate the design of any special studies required for a family of pesticides.
- **Higher quality and more comprehensive assessment of cumulative impacts** – Grouping classes of pesticides for consideration enhances our ability to meet our responsibilities in areas such as considering the impacts on endangered species and consulting with the Fish and Wildlife Service (FWS) in the Department of the Interior and the National Marine Fisheries Service in the National Oceanic and Atmospheric Administration (NOAA) in the Department of Commerce. Because FWS and NOAA could also consider a class of pesticides on a common timeframe, there is a greater likelihood that they would recommend consistent Reasonable and Prudent Alternatives in their Biological Opinions should consultation be required, which would provide benefits to pesticide registrants and users.
- **Reduced burden for registrants by minimizing redundant data submissions and allowing comprehensive discussion of issues and risk management approaches** – For instance, a registrant task force could coordinate production of data for common degradates, and possibly demonstrate to the Agency how data for a subset of pesticides in a class could be bridged to provide sufficient information for the entire class of pesticides.

- **Enhanced public participation** – Bundling chemicals can also benefit public participation in the registration review process. Rather than tracking actions, providing data and providing input on individual chemicals, the public can more effectively engage on entire groups of chemicals.
- **More flexible prioritization** – Bundling chemicals for review makes it easier to adjust priorities if circumstances demand. If new information or risk concerns demonstrate the need for accelerated review, it is easier to adjust resources and schedules when similar chemicals are already grouped together for action. For instance, when California accelerated their re-evaluation of pyrethroid registrations after the publication of new stream sediment monitoring data, the Agency was in a position to coordinate data requirements and study designs with California because it had already scheduled the registration review of pyrethroids as a class for the near future.

**Next step:** Some near-term examples of this chemical bundling include initiating registration reviews for the neonicotinoid insecticides and sulfonylurea herbicides in the next 12-18 months.

#### **2.2.15      \*\* Certification of pesticide applicators: eliminating uncertainties and improving efficiencies**

**Reason for inclusion:** EPA intends to review regulations for certification and training of pesticide applicators (40 CFR 171) to help clarify requirements and modify potentially redundant or restrictive requirements, in keeping with EO 13563’s directive to reduce regulatory burden.

**Background:** By law, certain pesticides may be applied only by or under the direct supervision of specially trained and certified applicators. Certification and training programs are conducted by states, territories, and tribes in accordance with national standards. EPA has been in extensive discussions with stakeholders since 1997, when the Certification and Training Assessment Group (CTAG) was established. CTAG is a forum used by regulatory and academic stakeholders to discuss the current state of, and the need for improvements in, the national certified pesticide applicator program. In July of 2004, well over a million private, state, federal, and tribal commercial certified applicators had active pesticide applicator certificates in the U.S.

Based on extensive interactions with stakeholders, EPA has identified the potential for streamlining activities which could reduce the burden on the regulated community by promoting better coordination among the state, federal, and tribal partnerships; clarifying requirements; and modifying potentially redundant or restrictive regulation. This review would also consider strengthening the regulations to better protect pesticide applicators, the public, and the environment from harm due to pesticide exposure. In addition, resources and time permitting, EPA intends to consider the use of innovative technology tools (e.g., investigation of the use of educational tools such as web based tools), including consideration of the need to ensure communication and training is available to non-English speakers.

**Next step:** EPA intends to propose improvements to these regulations in 2012.

## **2.2.16      \*\* Polychlorinated biphenyls (PCB) reforms: improving efficiencies and effectiveness**

**Reason for inclusion:** EPA intends to examine existing PCB guidance and regulations to harmonize regulatory requirements related to harmful PCB uses and to PCB cleanup. This is in keeping with EO 13563's directive to simplify and harmonize rules.

**Background:** EPA regulations governing the use of PCBs in electrical equipment and other applications were first issued in the late 1970s and have not been updated since 1998. EPA has initiated a rulemaking to reexamine these ongoing PCB uses with an eye to ending or phasing out uses that can no longer be justified under Section 6(e) of the Toxic Substances and Control Act (TSCA), which requires that EPA determine certain authorized uses will not present an unreasonable risk of injury to health and the environment. In addition, EPA recognizes that its cleanup program for PCBs may create barriers to the timely cleanup of sites that are contaminated with PCBs and other toxic constituents under EPA's other cleanup programs. Thus, EPA intends to look for opportunities to improve PCB regulations and related guidance to facilitate quicker and more effective PCB cleanups, for example with respect to PCB-contaminated caulk. EPA has already started looking for opportunities to improve PCB cleanup guidance and intends to work with states to identify areas for focus and plans to describe those results in future updates of our retrospective reviews.

**Next step:** EPA intends to look in the future (not earlier than 2013), after guidance revision opportunities are completed, at whether there are remaining issues that need regulatory revisions to facilitate quicker and more effective PCB cleanups.

## **2.2.17      \*\* Hazardous waste requirements for retail products: clarifying and making the program more effective**

**Reason for inclusion:** A national retailer submitted comments on the regulatory review plan and outlined during the public listening sessions a number of issues that retailers face in complying with the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. EPA intends to gather data that could, in the future, inform a potential review of RCRA hazardous waste requirements to determine how they might be clarified or modified for retail products, consistent with EO 13563's directive to make regulatory programs more effective or less burdensome.

**Background:** Retailers face uncertainty in managing the wide range of retail products that may become wastes if unsold, returned, or removed from shelves for inventory changes. The issues raised include how to determine when unsold materials and materials returned by consumers become waste, how to make hazardous waste determinations for the many different kinds of materials that may become waste, and how the regulations apply to pharmaceuticals from retail pharmacies.

**Next steps:** The Agency is taking several steps to address these issues. First, EPA intends to review its regulations to determine whether to issue guidance in the short term concerning certain pharmaceutical containers.

Second, EPA intends to review the data and information in our possession about pharmaceutical products that may become wastes to address these issues as part of a rulemaking on pharmaceutical waste management.

Third, EPA intends to analyze relevant information to identify what the issues of concern are, what materials may be affected, what the scope of the problem is, and what options may exist for addressing the issues. EPA would then determine what future actions, if any, may be appropriate based on EPA's evaluation of the data gathered.

#### **2.2.18 Contaminants under the Safe Drinking Water Act (SDWA): coordinating regulatory requirements**

**Reason for inclusion:** EPA intends to coordinate drinking water regulatory requirements and regulate more cost-effectively by addressing contaminants as groups.

**Background:** On March 22, 2010, EPA announced a new Drinking Water Strategy, which was aimed at finding ways to strengthen public health protection from contaminants in drinking water.<sup>36</sup> This collaborative effort across EPA program offices is intended to streamline decision-making and expand protection under existing laws, and to enable EPA to provide more robust public health protection in an open and transparent manner, assist small communities to identify cost and energy efficient treatment technologies, and build consumer confidence by providing more efficient sustainable treatment technologies to deliver safe water at a reasonable cost. To obtain input on the strategy, EPA held four public listening sessions around the country, hosted a web-based discussion forum, and met with the National Drinking Water Advisory Council. In addition, EPA held a web dialogue and stakeholder meeting focused on the first goal of the strategy. The first goal of the strategy is to address contaminants as groups rather than one at a time, so that enhancement of drinking water protection can be achieved cost-effectively.

The Agency announced in February 2011 that it plans to develop one national drinking water regulation (NDWR) covering up to sixteen carcinogenic Volatile Organic Compounds (VOCs). EPA intends to propose a regulation to address carcinogenic contaminants as groups rather than individually in order to provide public health protections more quickly and also allow utilities to more effectively and efficiently plan for improvements. This action is part of the Agency's Drinking Water Strategy to help streamline implementation of drinking water rules for the regulated community.

**Next step:** EPA expects to issue a proposed rulemaking in the fall of 2013.

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<sup>36</sup> See <http://water.epa.gov/lawsregs/rulesregs/sdwa/dwstrategy/index.cfm>

## 2.2.19      **\*\*Section 610 reviews: coordinating requirements**

**Reason for inclusion:** This review is included in the Plan because EPA intends to coordinate retrospective reviews that arise from a variety of statutory and Presidential mandates. Where appropriate, EPA intends to coordinate our small business retrospective reviews, required by Section 610 of the Regulatory Flexibility Act, with other required reviews (e.g., under the Clean Air Act). This will aid in meeting EO 13563's directive to reduce or eliminate redundant, inconsistent, or overlapping requirements.

**Background:** Under Section 610 of the Regulatory Flexibility Act, EPA is required to review regulations that have or will have a significant economic impact on a substantial number of small entities (SISNOSE) within ten years of promulgation. Section 610 specifically requires review of such regulations to determine the continued need for the rule; the nature of complaints or comments received concerning the regulation from the public since promulgation; the complexity of the regulation; the extent to which the rule overlaps, duplicates or conflicts with other federal regulations, and, to the extent feasible, with state and local government regulations; and 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 area affected by the regulation. These areas effectively promote many of the same principles of transparency, streamlining, and flexibility outlined in EO 13563. To the extent practicable, EPA plans to use the opportunity under this Plan to combine our Section 610 reviews with other reviews.

**Next steps:** EPA's upcoming 610 reviews include:

- National Pollutant Discharge Elimination System Permit Regulation and Effluent Guidelines and Standards for Concentrated Animal Feeding Operations due by February 2013;
- NESHAP: Reinforced Plastic Composites Production due by April 2013; and
- Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel due by June 2014.

### 3 Public Involvement and Agency Input for this Plan

EPA developed this Plan by gathering input from the public during two public comment periods, one of which was held before the preliminary Plan was released and one held afterwards. We also sought input from the Agency's subject matter experts who, outside of this retrospective review effort, often interact with businesses, states, and other regulated entities, as well as other stakeholders interested in EPA regulations. In parallel efforts, we sought to learn how public stakeholders and Agency experts would recommend designing EPA's *Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations*. The regulatory reviews described in section 2 respond to a number of the comments submitted by the public both in this forum and in public outreach efforts conducted by EPA.

#### 3.1 Public involvement in developing this Plan

Through EPA's public involvement process, the Agency gathered verbal and written public comments on the design of the Plan and on regulations that should be candidates for retrospective review. EPA opened two public comment periods during the development of this Plan. The first was held from February 18, 2011, to April 4, 2011 and gathered the public's written comments on how the Plan should be designed. During the first comment period, EPA also held a series of meetings to gather additional input. The second comment period was held from May 26, 2011, to June 27, 2011. It was held after the release of EPA's preliminary Plan and invited additional public comments on the Plan.

##### 3.1.1 Public Comment Period #1

EPA posted the "Improving Our Regulations" website (<http://www.epa.gov/improvingregulations>) on February 18, 2011. The site provided direct links to a total of fifteen dockets established in [Regulations.gov](http://www.regulations.gov) where members of the public could submit written comments about how EPA should design the Plan during the first comment period. Many commenters also suggested regulations as candidates for retrospective review. Fourteen of the dockets allowed the public to submit ideas by:

- Issue or impact:
  - [Benefits and costs](#) (Docket # EPA-HQ-OA-2011-0158)
  - [Compliance](#) (EPA-HQ-OA-2011-0166)
  - [Economic conditions / market](#) (EPA-HQ-OA-2011-0167)
  - [Environmental justice / children's health / elderly](#) (EPA-HQ-OA-2011-0168)
  - [Integration and innovation](#) (EPA-HQ-OA-2011-0161)
  - [Least burdensome / flexible approaches](#) (EPA-HQ-OA-2011-0165)
  - [Science / obsolete / technology outdated](#) (EPA-HQ-OA-2011-0162)
  - [Small business](#) (EPA-HQ-OA-2011-0164)
  - [State, local and tribal governments](#) (EPA-HQ-OA-2011-0163)
- Program area:
  - [Air](#) (EPA-HQ-OA-2011-0155)
  - [Pesticides](#) (EPA-HQ-OA-2011-0157)
  - [Toxic substances](#) (EPA-HQ-OA-2011-0159)
  - [Waste](#) (EPA-HQ-OA-2011-0160)

- [Water](#) (EPA-HQ-OA-2011-0154)

A fifteenth docket collected [general comments](#) (EPA-HQ-OA-2011-0156) that spanned more than one issue/impact or program area. Also, we established an email account where members of the public could submit their ideas: [ImprovingRegulations.SuggestionBox@epa.gov](mailto:ImprovingRegulations.SuggestionBox@epa.gov). And finally, EPA issued a *Federal Register* (FR) notice<sup>37</sup> to ensure that people who lacked Internet access could read EPA's call for public comment.

The website, dockets, and FR notice included guiding questions based on the principles of EO 13563 and EPA's priorities. The Agency provided these questions to guide the public in formulating their ideas, not to restrict their comments. (See the questions in the appendix.)

Written comments were initially solicited from February 18 – March 20, 2011. After hearing many requests from the public to extend the comment period, EPA extended the due date to April 4, 2011. Hundreds of submissions were made to the public dockets. To advertise the public comment process and the public meetings, we issued a press release, publicized on our [Open Government website](#) and other key websites, and posted on the Agency's Facebook and Twitter pages.

### **3.1.2 Public Meetings**

Verbal comments were solicited at a series of twenty public meetings. On March 14, EPA held a day-long public meeting in Arlington, Virginia, focused on all aspects of the Plan. The first half of the day focused on how to design the Plan. The second half was divided into targeted, concurrent sessions that focused on five areas: air, pesticides, toxic substances, waste, and water. Additionally, EPA held nineteen more town halls and listening sessions targeting specific programs areas (e.g. solid waste and emergency response) and EPA Regions. In total, approximately 600 members of the public attended.

### **3.1.3 Public Comment Period #2**

The preliminary version of this Plan was released on May 26, 2011. That same day, in keeping with OMB guidance,<sup>38</sup> EPA opened a second public comment period that ended on June 27,

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<sup>37</sup> EPA issued a *Federal Register* (FR) notice on February 23, 2011, to announce the first public comment period and public meeting. EPA subsequently issued a second FR notice on March 18<sup>th</sup> to extend the first comment period. The respective citations are:

- "Improving EPA Regulations; Request for Comment; Notice of Public Meeting (Request for comment; notice of public meeting)." 76 FR 9988 (February 23, 2011). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2011-02-23/pdf/2011-4152.pdf>; Accessed: 08/15/11.
- "Extension of Comment Period: EPA's Plan for Retrospective Review Under Executive Order 13563 (Extension of comment period.);" 76 FR 14840 (March 18, 2011). Available from: FDsys, <http://www.gpo.gov/fdsys/pkg/FR-2011-03-18/pdf/2011-6413.pdf>; Accessed: 08/15/11.

<sup>38</sup> "Retrospective Review of Existing Regulations, April 25, 2011 (Memorandum from Office of Information and Regulatory Affairs Administrator Cass R. Sunstein)." Available from: the Office of Management and Budget, website: <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-19.pdf>; Accessed 08/15/2011.

2011. The second comment period gave the public the opportunity to provide written comments after reading the preliminary document. During this second comment period, the public could submit comments via our [general comments](#) docket (EPA-HQ-OA-2011-0156). In total, between this comment period and the first one, EPA received over 800 comments.<sup>39</sup>

Although EPA is unable to conduct – all at one time – the many reviews that were suggested during our two public comment periods and in the public meetings, the comments will be retained in our publicly accessible Regulations.gov dockets and EPA intends to once again review the comments in the future five-year review periods described in section 4.

### 3.2 Agency input into this Plan

While EPA’s public involvement process was underway, the Agency also engaged in an extensive process to tap the expertise of regulatory professionals throughout EPA and complement ideas gathered from the public. A cross-Agency workgroup helped craft the Plan and collected nominations for retrospective reviews from EPA’s rule-writing experts, as well as those who work on regulatory enforcement and compliance. Staff and managers in [EPA’s ten Regional offices](#) hold responsibilities for executing EPA’s programs within the Nation’s states, territories, and tribal nations. The Regions also assisted with the design of the Plan and identified regulations that should be candidates for retrospective review.

Moreover, EPA combined efforts in the development of this Plan during preparation of the *Spring 2011 Semiannual Regulatory Agenda*. The Agenda describes a broad universe of regulatory activities under development or review, as well as recently completed regulations. This comprehensive report of regulations currently under development includes a number of activities that EPA identified as responsive to EO 13563. EPA has a long history of reviewing regulations and related activities in an effort to continually improve its protection of human health and the environment. It is the Agency’s ongoing responsibility to listen to regulated groups and other stakeholders, rely on EPA expertise and quality scientific and economic analyses, address petitions for regulatory revisions, and otherwise respond to public and internal cues that indicate when reviews are necessary.

EPA determined which ongoing activities listed in our upcoming *Spring 2011 Semiannual Regulatory Agenda* are themselves a retrospective review. While some of these regulatory reviews are required by statute, many others are being examined by EPA as a discretionary measure. EPA intends to apply the principles and directives of EO 13563 to these ongoing reviews.

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<sup>39</sup> The preliminary version of this plan stated that EPA received over 1,400 public submissions during the first round of public comments. Between the development of the preliminary plan and this final version, the [www.Regulations.gov](http://www.Regulations.gov) system changed how submissions are counted; therefore, the total number decreased.

## 4 EPA’s Plan for Future Periodic Regulatory Reviews

EPA has selected an initial list of regulations that are expected to be reviewed during our first review period. However, EO 13563 also calls for “a...plan, consistent with law and its resources and regulatory priorities, under which the agency will *periodically* review its existing significant regulations...” (emphasis added).<sup>40</sup> Consistent with the commitment to periodic review and to public participation, the EPA intends to continue to assess its existing significant regulations in accordance with the requirements of Executive Order 13563. We welcome public suggestions about appropriate reforms. If, at any time, members of the public identify possible reforms to modify, streamline, expand or repeal existing regulations, we will give those suggestions careful consideration. This section of the Plan therefore defines a process that EPA intends to use for predictable, transparent future reviews, to be conducted every five years.

### 4.1 Management and oversight of the Plan

EPA’s Regulatory Policy Officer (RPO) was responsible for developing this Plan for the EPA Administrator. Going forward, the RPO intends to manage and oversee the execution of future retrospective reviews; report on EPA’s progress; and evaluate the Plan. EPA’s RPO is the Associate Administrator for the Office of Policy. Organizationally, the Office of Policy (OP) is situated in the EPA Administrator’s office and is independent from those parts of EPA that routinely write and implement regulations (such as the Office of Air and Radiation and the Office of Chemical Safety and Pollution Prevention). OP is not a regulatory development office, but it is responsible for a number of regulatory coordination, management, policy, and review functions. Among other tasks, OP reviews the economic and scientific underpinnings of regulations to help ensure consistency and sound decision-making, serves as the Administrator’s regulatory policy advisor, and liaises with the Office of Management and Budget and the Office of Federal Register to ensure interagency review and publication of regulatory documents. Given OP’s role providing regulatory analysis, advice, and management – independent of other offices’ responsibility to promulgate and implement regulations – it is fitting that the RPO oversees the implementation of this plan and the execution of future retrospective reviews.

### 4.2 Process for conducting retrospective reviews

EPA plans to ask the public about our full range of regulations – soliciting comments on what the public recommends for review – on a five-year cycle. The RPO also intends to ask for input from EPA’s subject matter experts who, outside of this retrospective review effort, often interact with businesses, states, and other regulated entities, as well as other stakeholders interested in EPA regulations. Every five years, the Agency intends to follow a four-step process for retrospective reviews:

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<sup>40</sup> “Improving Regulation and Regulatory Review (Executive Order 13563).” 76 FR 3821 (January 21, 2011). Available from: the Government Printing Office’s Federal Digital System (FDsys): <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>; Accessed: 08/15/11.

### Step 1: Solicit Nominations

- At the start of each new review period, EPA plans to ask the public, other federal agencies, and EPA experts to nominate regulations that are in need of review.
- EPA plans to announce the new nomination period via the *Semiannual Regulatory Agenda*, a press release, and related outreach tools.
- EPA intends to collect public input via a [Regulations.gov](https://www.regulations.gov) docket.
- EPA plans to collect input from EPA experts via a staff-level “Regulatory Review Workgroup,” as well as senior management meetings.



### Step 2: Select Regulations for Review

- From the nominees, EPA intends to select a discrete number of regulations for review. To the extent permitted by law, selections are intended to be based on:
  - Comments gathered in Step 1;
  - The expertise of the EPA offices writing the regulations;
  - Priorities of the day, such as judicial rulings, emergencies, etc.;
  - Criteria described in subsection 4.3, and
  - Agency resources.



### Step 3: Conduct Retrospective Reviews

- Rule-writing offices plan to review the selected regulations using the criteria described in subsection 4.3.
- The Agency intends to establish a docket for each regulation under review in order to collect public comments on whether to revise the regulation, and if so, how.
- EPA intends to announce which regulations are under review in the *Semiannual Regulatory Agenda* and on the [EPA](https://www.epa.gov) website.



### Step 4: Make Necessary Modifications

- After collecting comments from the public and conducting our own analyses, EPA intends to make modifications to any regulation that warrants it, as determined during Step 3.
- The Agency plans to announce such modifications in the *Federal Register*, the EPA website, and the *Semiannual Regulatory Agenda*.

In each review period, the first three steps are expected to take approximately one year to complete, giving the Agency the remaining four years, or more if needed, to complete modifications as warranted.

## 4.3 Criteria for regulatory reviews

In each review period, EPA intends to use the principles and directives of EO 13563 both to help determine which of the suggested regulations should be reviewed (Step 2 in subsection 4.2) and to evaluate regulations under review (Step 3 in subsection 4.2) Consistent with applicable

statutory requirements, during Step 2, the Agency intends to assess in a general way whether the principle or directive is likely to have a bearing on the regulation's review; while during Step 3, the Agency intends to analyze each regulation more fully and answer the questions that appear under each heading below.

For example, the first principle listed in EO 13563 is: “[T]o the extent permitted by law, each agency must, among other things propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify).”<sup>41</sup> This principle corresponds to the “Benefits justify costs” heading below. To the extent permitted by law, during Step 2, EPA intends to answer a general question such as “Are there benefit and cost estimates related to this regulation that warrant review at this time?” If yes, then during Step 3, the Agency intends to conduct a benefit-cost analysis to understand if the benefits of continuing the regulation still justify its costs.

- **Benefits justify costs**
  - Now that the regulation has been in effect for some time, do the benefits of the regulation still justify its costs?
  
- **Least burden**
  - Does the regulation impose requirements on entities that are also subject to requirements under another EPA regulation? If so, what is the cumulative burden and cost of the requirements imposed on the regulated entities?
  - Does the regulation impose paperwork activities (reporting, recordkeeping, or third party notifications) that could benefit from online reporting or electronic recordkeeping?
  - If this regulation has a large impact on small businesses, could it feasibly be changed to reduce the impact while maintaining environmental protection?
  - Do feasible alternatives to this regulation exist that could reduce this regulation's burden on state, local, and/or tribal governments without compromising environmental protection?
  
- **Net benefits**
  - Is it feasible to alter the regulation in such a way as to achieve greater cost effectiveness while still achieving the intended environmental results?
  
- **Performance objectives**
  - Does the regulation have complicated or time-consuming requirements, and are there feasible alternative compliance tools that could relieve burden while maintaining environmental protection?
  - Could this regulation be feasibly modified to better partner with other federal agencies, state, local, and/or tribal governments?

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<sup>41</sup> *Ibid.*

- **Alternatives to direct regulation**
  - Could this regulation feasibly be modified so as to invite public/private partnerships while ensuring that environmental objectives are still met?
  - Does a feasible non-regulatory alternative exist to replace some or all of this regulation's requirements while ensuring that environmental objectives are still met?
- **Quantified benefits and costs / qualitative values**
  - Since being finalized, has this regulation lessened or exacerbated existing impacts or created new impacts on vulnerable populations such as low-income or minority populations, children, or the elderly?
  - Are there feasible changes that could be made to this regulation to better protect vulnerable populations?
- **Open exchange of information**
  - Could this regulation feasibly be modified to make data that is collected more accessible?
  - Did the regulatory review consider the perspectives of all stakeholders?
- **Coordination, simplification, and harmonization across agencies**
  - If this regulation requires coordination with other EPA regulations, could it be better harmonized than it is now?
  - If this regulation requires coordination with the regulations of other federal or state agencies, could it be better harmonized with those regulations than it is now?
- **Innovation**
  - Are there feasible changes that could be made to the regulation to promote economic or job growth without compromising environmental protection?
  - Could a feasible alteration be made to the regulation to spur new markets, technologies, or jobs?
  - Have new or less costly methods, technologies, and/or innovative techniques emerged since this regulation was finalized that would allow regulated entities to achieve the intended environmental results more effectively and/or efficiently?
- **Flexibility**
  - Could this regulation include greater flexibilities for the regulated community to encourage innovative thinking and identify the least costly methods for compliance?
- **Scientific and technological objectivity**
  - Has the science of risk assessment advanced such that updated assessments of the regulation's impacts on affected populations such as environmental justice communities, children or the elderly could be improved?
  - Has the underlying scientific data changed since this regulation was finalized such that the change supports revision to the regulation?

- Has the regulation or a portion(s) of the regulation achieved its original objective and become obsolete?
- Does the regulation require the use of or otherwise impose a scientific or technical standard? If so, is that standard obsolete or does it otherwise limit the use of updated or improved standards?

#### 4.4 Public involvement in future review periods

Just as the public has been involved in the development of this Plan, EPA plans to routinely involve the public in our periodic retrospective review process. The Agency intends to ensure regular public involvement by:

- **Starting each review period by soliciting input from the public** – As we did for this initial review period, EPA intends to collect public comments at the start of each five-year review period to begin identifying nominees for regulatory review. This public involvement process is described in section 4.2.
- **Using the existing tools to aid the public in tracking our review activities.** EPA plans to publicize our regulatory review schedule in the *Semiannual Regulatory Agenda*. In this twice yearly publication, we plan to announce upcoming review periods and provide status updates of the reviews underway. At this time, EPA expects to begin its next review period in spring 2016.

Between the twice yearly publications of the *Semiannual Regulatory Agenda*, EPA will provide updates to Agency reviews on relevant portions of the EPA website. For example, EPA intends to link the tracking tools for this Plan to [EPA’s Open Government website](#) for seamless integration of the Agency’s retrospective review efforts and broader transparency efforts. Also, EPA will share information about the plan on <http://www.epa.gov/improvingregulations/>.<sup>42</sup>

- **Making data and analyses available, whenever possible.** Data.gov catalogs federal government datasets and increases the ability of the public to easily find, download, and use datasets that are generated and held by the federal government. EPA will strive to make available, to the extent possible, the raw data used to conduct retrospective analyses on [www.data.gov](http://www.data.gov). The Agency also intends to continue to provide access to underlying analyses in the Regulations.gov docket established for a regulation.
- **Providing notice-and-comment opportunities as the Agency makes modifications to regulations.** As is typically the case for new rulemakings, EPA intends to issue a Notice of Proposed Rulemaking (NPRM) for each modification resulting from a retrospective

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<sup>42</sup> This is the web address for the “Improving Regulations” website referenced in section 3 of this plan. The website will be redesigned over time to incorporate ongoing updates to EPA’s efforts.

review, during which the Agency would invite public comment on the proposed modifications.

- **Providing ways to contact EPA’s RPO staff.** At any time, the public may submit a comment to RPO staff members about the Agency’s Plan via the [general comments](#) docket (EPA-HQ-OA-2011-0156). The Agency intends to make the docket easily accessible on its website and in all materials and media related to the Plan.

#### 4.5 Reporting on each review period

As touched on in subsection 4.4, EPA intends to regularly report on its progress. EPA plans to report on the regulations under review, as well as modifications resulting from the reviews, by using EPA’s *Semiannual Regulatory Agenda*. Also, the Agency intends to provide more frequent updates on relevant portions of the EPA website and link online information to [EPA’s Open Government website](#) for seamless integration of the Agency’s retrospective review efforts and broader transparency efforts.

#### 4.6 Frequency of review periods

EPA plans to begin a new retrospective review period every five years. The first review period is expected to last from spring 2011 to spring 2016, the next period would then span spring 2016 to spring 2021, and subsequent periods would continue on five-year cycles. EPA intends to begin each review period with a public solicitation, during which time EPA would ask the public to nominate any of the Agency’s existing regulations for retrospective review. The public nomination process would be coupled with an internal effort to capture the nominations of EPA experts.

At any time, EPA maintains the discretion to add to the list of nominated rules gathered from the public, and EPA intends to select regulations for review using considerations that go beyond those identified by the public. (See the considerations described in step 2, subsection 4.3.) The Agency may choose to make changes to respond to public suggestions, judicial rulings, emergencies, or other unexpected issues.

## 5 Evaluation of the First Review Period

In late 2016, as directed by OMB, EPA plans to lead an evaluation of the first review period to identify the best practices and areas of improvement for the Plan. Among other things, EPA plans to evaluate:

- Whether the criteria used for retrospective reviews (listed in subsection 4.3) should be expanded or otherwise modified.
- The resources required to conduct the first review period, and the feasibility / consequences of expending the same level of resources on an ongoing basis.
- The results of the review (e.g., how many regulations were revised? in what ways?).

The results of this evaluation will be made available to the public via an announcement in EPA's *Regulatory Agenda*, as well as the other, regular reporting mechanisms described in subsection 4.5.

## 6 Contact Information

For more information about EPA's Plan and retrospective reviews, contact RPO staff at:

Email: [ImprovingRegulations.SuggestionBox@epa.gov](mailto:ImprovingRegulations.SuggestionBox@epa.gov)

Mail:

Regulatory Policy Officer

Re: Retrospective Review of Regulations

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, Northwest (Mail Code 1803A)

Washington, DC 20460

## Appendix: Questions offered during the public comment period to help the public formulate their comments

The following questions – both general questions and questions categorized by issue or impact – were published on EPA’s [Improving Our Regulations](#) website and added to the fifteen dockets that collected public comments during EPA’s first public comment period that ran from 02/18/2011 to 04/04/2011. EPA provided this non-exhaustive list of questions to help the public formulate their ideas; these questions were not intended to restrict the issues that the public may wish to address.

### General Questions

- How should we identify candidate regulations for periodic retrospective review?
- What criteria should we use to prioritize regulations for review?
- How should our review plan be integrated with our existing requirements to conduct retrospective reviews?
- How often should we solicit input from the public?
- What should be the timing of any given regulatory review (e.g., should a regulation be in effect for a certain amount of time before it is reviewed)?

### Questions Specific to an Issue or Impact

#### Benefits and Costs

([Regulations.gov](#) Docket #EPA-HQ-OA-2011-0158)

- Which regulations have high costs and low benefits? What data support this?
- Which regulations could better maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity)? What data support this? What quantitative and qualitative benefits and costs justify your suggestion (recognizing that some benefits and costs are difficult to quantify)?

#### Compliance

(EPA-HQ-OA-2011-0166)

- Which regulations have complicated or time consuming requirements? To what extent are alternative compliance tools available? Could the regulations be modified to improve compliance? What data support this?
- Which regulations or regulated sectors have particularly high compliance? How could the factors or approaches that lead to high compliance be utilized in other regulations and sectors? What data is available to support this?

## **Economic Conditions/ Market**

(EPA-HQ-OA-2011-0167)

- Which regulations have impacted an industry sector(s) that was hard hit by high unemployment in the past three years? What changes to the regulation would promote economic growth or job creation without compromising environmental protection? What data support this?
- How can regulations spur new markets, technologies, and new jobs? What suggestions do you have to support this idea?
- Which regulations have impeded economic growth in an affected industry sector? What information is available to support this? How could the regulations be modified to improve both economic growth and environmental protection? What data support this?
- Where can EPA examine market-based incentives as an option to regulation? What program would you design that utilizes market-based incentives and ensures environmental objectives are still met?
- How can a regulation be improved so as to create, expand or transform a market?
- Which regulations could be modified so as to invite public/private partnerships, and how?

## **Environmental Justice / Children's Health / Elderly**

(EPA-HQ-OA-2011-0168)

- Which regulations have exacerbated existing impacts or created new impacts on vulnerable populations such as low-income or minority populations, children, or the elderly? Which ones and how? What suggestions do you have for how the Agency could change the regulations? What data support this?
- Which regulations have failed to protect vulnerable populations (minority or low-income, children or elderly) and why?
- Which regulations could be streamlined, modified, tightened, or expanded to mitigate or prevent impacts to vulnerable populations (minority or low-income, children or elderly)? What suggestions do you have for changing the regulations? What data support this?

## **Integration and Innovation**

(EPA-HQ-OA-2011-0161)

- Which regulations could achieve the intended environmental results using less costly methods, technology, or innovative techniques? How could the regulations be changed? What data support this?

- Which regulations could be improved by harmonizing requirements across programs or agencies to better meet the regulatory objectives? What suggestions do you have for how the Agency can better harmonize these requirements?
- Which regulations have requirements that are overlapping and could be streamlined or eliminated? What suggestions do you have for how the Agency could modify the regulations? Be specific about how burden can be reduced from gained efficiencies related to streamlining the requirements.
- What opportunities exist for the Agency to explore alternatives to existing regulations? How can these alternatives be designed to ensure that environmental objectives are still met?

### **Least Burdensome / Flexible Approaches**

(EPA-HQ-OA-2011-0165)

- Which regulations have proven to be excessively burdensome? What data support this? How many facilities are affected? What suggestions do you have for reducing the burden and maintaining environmental protection?
- Which regulations impose paperwork activities (reporting, recordkeeping, or 3rd party notifications) that would benefit from online reporting or electronic recordkeeping? Tell us whether regulated entities have flexibility in providing the required 3<sup>rd</sup> party disclosure or notification. What data support this? What suggestions do you have for how the Agency could change the regulation?
- Which regulations could be made more flexible within the existing legal framework? What data support this? What suggestions do you have for how the Agency could change the regulations to be more flexible?

### **Science / Obsolete / Technology Outdated**

(EPA-HQ-OA-2011-0162)

- Which regulations could be modified because the underlying scientific data has changed since the regulation was issued, and the change supports revision to the original regulation? What data support this? What suggestions do you have for changing the regulations?
- Which regulations have achieved their original objective and have now become unnecessary or obsolete? What data support this? What suggestions do you have for how the Agency could modify, streamline, expand, or repeal the regulation?
- Have circumstances surrounding any regulations changed significantly such that the regulation's requirements should be reconsidered? Which regulations? What data support this? What suggestions can you provide the Agency about how these regulations could be changed?

- Which regulations or reporting requirements have become outdated? How can they be modernized to accomplish their regulatory objectives better? What data support this? What suggestions do you have for how the Agency could change the regulations?
- Which regulations have new technologies that can be leveraged to modify, streamline, expand, or repeal existing requirements? What data support this? What suggestions do you have for how the Agency could change these regulations?

### **Small Business**

(EPA-HQ-OA-2011-0164)

- Which regulations have large impacts on small businesses? How could these regulations be changed to reduce the impact while maintaining environmental protection? Are there flexible approaches that might help reduce these impacts? Which of these regulations have high costs and low benefits? What data support this?
- Are there any regulations where flexible approaches for small businesses have proven successful and could serve as a model? Where else and how could these approaches be utilized?

### **State, Local and Tribal Governments**

(EPA-HQ-OA-2011-0163)

- Which regulations impose burden on state, local or tribal governments? How could these regulations be changed to reduce the burden without compromising environmental protection?
- What opportunities are there within existing regulations to better partner with state, local and/or tribal governments? If so, do you have suggestions for how to better utilize those opportunities?