Improving Our Regulations:
A Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations

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1 Overview

Text Box 1: EPA to Undertake 31 Priority Regulatory Reviews

In this Plan, EPA defines 31 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 15 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 31 reviews.

EPA developed this *Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations* (the Plan) in response to President Obama's recent call in Executive Order 13563 for each federal agency to "develop…a preliminary 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significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."[1] The Executive Order (EO) also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.

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; of the approximately 200 active actions that are expected to be listed in EPA's soon-to-publish *Spring 2011 Semiannual Regulatory Agenda*, roughly 60% are reviews of existing regulations.[2] Just as EPA will apply the principles and directives of EO 13563 to the priority actions listed in section 2 of this Plan, we will likewise apply the EOs' principles and directives to the regulatory reviews that will 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 21st 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

[1] "Improving Regulation and Regulatory Review," Executive Order 13,563, 76 FR 3821 (January 21, 2011), http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.

[2] This estimate is based on actions expected to be published in EPA's forthcoming *Spring 2011 Semiannual Regulatory Agenda*, except for the actions in the "Completed" or "Long Term" rulemaking stages. These estimates may change slightly by the time the *Spring 2011 Semiannual Regulatory Agenda* publishes.

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

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 its regulatory and stewardship programs. However, just as today's economy is vastly different from that of 40 years before, EPA's regulatory program must evolve to recognize the progress that has already been made in environmental protection and incorporate new technologies and approaches that allow us to accomplish our mission more efficiently and effectively.

High-speed information technologies allow real-time reporting of emissions and provide unprecedented opportunities for transparency and public involvement in matters affecting people's local environmental conditions. These technological advances allow us to better track environmental progress and apply innovative approaches to compliance. 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 regulatory program must evolve and build upon these nationwide trends, and improvements to our regulatory program should be made retrospectively and 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 each retrospective review, EPA intends to seek ways to advance 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 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. Many 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. EPA could convert existing paper-based reporting by regulated facilities for other environmental programs to a nationally consistent 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.

  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 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 Clean Air Act (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.

1.1.2 Improved Transparency

Second, in order to enhance transparency, EPA will strive to expand public disclosure of pollution, compliance, and other regulatory information, and provide communities with information about their environmental quality in a cost-effective and efficient manner. 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.

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 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.)

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.

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, economic incentives, information and reporting mechanisms and other structural incentives, including self-certification, third-party verification, and ambient monitoring in the community.

1.1.4 Systems Approaches and Integrated Problem-Solving

And finally, the Agency intends to design a 21st 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 comprehensive solutions to priority environmental problems.

As EPA reviews existing regulations and related programs, we intend to promote system approaches and integrated solutions within EPA and with other federal agencies. For example, the National Oceanic and Atmospheric Administration, Fish and Wildlife Service, U.S. Department of Agriculture, and EPA have formed an interagency workgroup of senior policy leaders to craft a multi-faceted strategy to address the challenge of the protection of endangered species and the administration of FIFRA.

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 area source rule for auto body shops. A technology based control limit was complemented by a non-regulatory pollution prevention approach. The *Design for Environment* 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. Another example is EPA's current efforts to develop an integrated approach to drinking water protection. (See text box 4.)

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 effectivenss.

EPA has also engaged the National Academy of Sciences (NAS) to convene national experts on the topic of sustainability science. While there have been over two decades of science focused on how to attain the goals of sustainability, this work has not translated into an operational framework. By the summer of 2011, the NAS will produce a document (the so called "green book") that will provide a foundation of recommendations for EPA to consider in implementing the types of analysis, assessments, and evaluations needed to institutionalize sustainability into all of the agency's decisions.

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).

1.2 A more efficient approach to regulation

EPA recognizes that there is potential for regulatory overlap and contradiction between various jurisdictional requirements. 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, 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 5. 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.

The technological advances of the Information Age also provide an opportunity to make environmental protection more data-driven and

Text Box 5: 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.

analytically rigorous while still collecting data and analyzing performance in a more efficient way. (As an example, see text box 6.) 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.

Text Box 6: 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.

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.

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 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;
- Priorities of the day, 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 websites, such as EPA's Open Government site and the Rulemaking Gateway, 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:

- **Maintain focus on EPA's mission.** First and foremost, EPA's 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 commitments.** This Plan recognizes the Agency's existing statutory and judicial requirements for regulatory reviews. As EPA moves forward, we must 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 will 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 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 will 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.[3]

[3] Access the "Guide to Considering Children's Health When Developing EPA Actions": http://yosemite.epa.gov/ochp/ochpweb.nsf/content/ADPguide.htm/$File/EPA_ADP_Guide_508.pdf.

2 Regulations We Plan to Review

EPA intends to undertake 31 regulatory reviews for this, our initial review period. 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 15 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. Note that this is only a preliminary list. Pursuant to guidance from the Office of Management and Budget (OMB), EPA intends to further consult with stakeholders in summer 2011. The 31 reviews listed here may or may not change as a result of this additional consultation.

Moreover, it is important to keep in mind that the 31 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. Of the approximately 200 active actions that are expected to be listed in EPA's soon-to-publish *Spring 2011 Semiannual Regulatory Agenda*, roughly 60% are reviews of existing regulations.[4]

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, 21st century regulatory program.

The Agency has recently completed a pair of actions that are illustrative of efforts we intend to

Text Box 7: 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 $146 million per year.

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 74 (18 April 2011), pp. 21652 – 21660, http://www.gpo.gov/fdsys/pkg/FR-2011-04-18/pdf/2011-9288.pdf.

[4] This estimate is based on actions expected to be published in EPA's forthcoming *Spring 2011 Semiannual Regulatory Agenda*, except for the actions in the "Completed" or "Long Term" rulemaking stages. These estimates may change slightly by the time the *Spring 2011 Semiannual Regulatory Agenda* publishes.

pursue under this Plan:

- 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 $146 million. (See text box 7.)

- On March 29, 2011, EPA finalized a regulation[5] 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 Clean Air Act 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 $44,372; but as a result of EPA's regulatory review, the estimated cost under the same assumed conversion scenario would be about $36,744 for new light-duty engines and $13,175 for intermediate-age and older light-duty engines. For heavy-duty engines, the cost savings are expected to be even greater.

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 upcoming activities under the EO.

2.1 Early actions

Of the 31 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 in one or more public comments.

1. ** Lead Renovation, Repair, and Painting Program: considering new post-work requirements designed to ensure cleaning meets clearance standards
2. ** Sanitary Sewer Overflow (SSO) and peak flow wet weather discharges: clarifying permitting requirements
3. Vehicle fuel vapor recovery systems: eliminating redundancy
4. ** Gasoline and diesel regulations: reducing reporting and recordkeeping

[5] "Clean Alternative Fuel Vehicle and Engine Conversions; Final Rule," 76 FR 68 (08 April 2011), pp. 19830 – 19874, http://www.gpo.gov/fdsys/pkg/FR-2011-04-08/pdf/2011-7910.pdf.

5. Regulatory certainty for farmers: working with the U.S. Department of Agriculture (USDA) and states
6. ** Modern science and technology methods in the chemical regulation arena: reducing whole-animal testing, reducing costs and burdens, and improving efficiencies
7. ** 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
8. ** National Priorities List rules: improving transparency
9. Quick changes to some TSCA reporting requirements: reducing burden
10. Integrated pesticide registration reviews: reducing burden and improving efficiencies
11. ** National Pollutant Discharge Elimination System (NPDES): coordinating permit requirements and removing outdated requirements
12. ** Vehicle regulations: harmonizing requirements for:
    a. Fuel economy labels
    b. Greenhouse gas and fuel economy standards
    c. Vehicle emission standards
13. Multiple air pollutants: coordinating emission reduction regulations and using innovative technologies
14. ** New Source Performance Standards (NSPS) reviews and revisions: setting priorities to ensure updates to outdated technologies
15. Innovative technology: seeking to spur new markets and utilize technological innovations
16. ** The costs of regulations: improving cost estimates

2.1.1 **[6] Lead Renovation, Repair, and Painting Program: considering new post-work requirements designed to ensure cleaning meets clearance standards

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. 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 finished and before the areas are re-occupied. These additional requirements included 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 $272 million to $290 million per year ($2008). EPA is now reviewing the efficacy of both its original testing requirements as well

[6] Asterisks (**) preceding the heading of a review indicate those reviews which were suggested in one or more public comments.

as those additional requirements proposed in 2010 and expects to issue a final rule in summer 2011.

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

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. In addition to hydraulic concerns, wastewater associated with peak flows may have low organic strength, which can also decrease treatment efficiencies. 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 addressing such situations.

EPA intends to hold a workshop as a follow-up to the listening sessions that EPA held in June and July of 2010, concerning issues associated with Sanitary Sewer Overflows and Peak Flow wet weather discharges. EPA received extensive verbal and written comments during and as a result of these listening sessions. The objective of the follow-up workshop is to allow stakeholders to discuss these issues in greater detail. Following the workshop, EPA will evaluate options that are appropriate (rule or policy or neither) for addressing Separate Sanitary Overflows and Peak Flow wet weather discharges.

2.1.3 Vehicle fuel vapor recovery systems: eliminating redundancy

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 expects to issue a proposed rulemaking, entitled "Widespread Use of Onboard Refueling Vapor Recovery," in summer 2011. 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 $67 million per year ($2011).

2.1.4 ** Gasoline and diesel regulations: reducing reporting and recordkeeping

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 review is planned to be done 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. EPA expects to propose modifications to gasoline and diesel regulations in late 2011.

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

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 are working with states to develop programs that can provide assurances that the farmers' actions are consistent with state plans to improve water quality. EPA and USDA's efforts are intended to allow states flexibility to increase farmers' and other landowners' interest and willingness to adopt the most effective land stewardship practices by providing incentives that increase the pace and extent to which resource conservation and verifiable water quality improvements are achieved. EPA expects that the project will be up and running at the state level with USDA partners by the end of the calendar year.

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

The identification, evaluation, and regulation of chemicals to protect human health and the environment is the essence of EPA's mandate. Given the increasing demands to assess 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.[7]

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. 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:

[7] See also the 2007 Report from the National Research Council entitled "Toxicity Testing in the 21st Century: A Vision and a Strategy." *http://www.nap.edu/openbook.php?record_id=11970*.

- 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 will describe the major steps needed to develop and transition to the decision support tools (i.e., computational toxicology tools) for priority setting and targeted testing; and propose three case studies relevant to industrial chemicals, water contaminants, and pesticides. In addition, EPA is developing a work plan to identify the steps needed to satisfy the validation requirements related to regulatory acceptance of these new approaches for possible use in screening under the Endocrine Disruptors Screening Program (EDSP). In 2011, EPA is expanding its efforts to engage interested stakeholders in this project.

2.1.7 ** 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

EPA currently collects a variety of chemical-specific health and safety data under several different regulations issued pursuant to TSCA, FIFRA, and FFDCA.

During the public involvement process, 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 implemented efforts to incorporate online electronic reporting of information it collects under the TSCA regulations, and we intend to consider lessons learned from the electronic pilot initiated several years ago for accepting electronic copies of some pesticide information submitted under FIFRA and FFDCA.

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. The regulated community has indicated that these savings could be substantial. At this time, EPA has not yet estimated the potential burden reduction or savings that might result from the improved efficiencies being considered.

Later this year, the Agency expects to propose revisions to implement electronic reporting for the submission of health and safety data under TSCA. For the consideration of electronic reporting options for pesticide submissions, EPA intends to develop a workplan for completing this review effort within the next 12 months. The workplan is intended to identify a timeline and the process that EPA plans to use in expanding the existing effort that was initiated with stakeholders.

2.1.8 ** National Priorities List rules: improving transparency

EPA will ensure meaningful and substantial state involvement in decisions to place sites on the National Priorities List (NPL). During the public involvement process, 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. EPA intends to address this programmatic concern through the ongoing Integrated Cleanup Initiative during the third quarter of fiscal year 2011 and beyond.

2.1.9 Quick changes to some TSCA reporting requirements: reducing burden

EPA is developing a proposal to make a few quick changes to three existing reporting requirements under TSCA to reduce reporting burdens and to clarify reporting to provide for more efficient review of health and environmental data for more effective protection of public health and the environment. Specifically, the 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; 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.

These quick changes are expected to result in important efficiencies and burden reduction for industry and EPA, as well as improve the quality of information provided to the public. EPA expects to propose changes to reporting requirements by the end of 2011.

2.1.10 Integrated pesticide registration reviews: reducing burden and improving efficiencies

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., neonicitinoids, pyrethroids). This has significant efficiency benefits for registrants, the public, and EPA. For example, 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. It also promotes higher quality and more comprehensive assessment of cumulative impacts. By grouping classes of pesticides for consideration, it 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 in the Department of the Interior, and National Marine Fisheries Service in the National Oceanic and Atmospheric Administration, Department of Commerce. Because the Services 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.

Bundling chemicals for registration review can also ease the 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. This approach 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. Finally, 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. 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.

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

EPA plans 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 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 permits on their state agency websites in lieu of traditional newspaper posting. EPA expects to propose modifications to NPDES permit regulations by the end of 2011.

2.1.12 ** Vehicle regulations: harmonizing requirements

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. Activities to be considered include:

- Fuel Economy Label harmonization with the California Air Resources Board (CARB) and Federal Trade Commission (FTC) – Working in coordination with DOT, EPA reviewed and proposed changes to the fuel economy label that consumers see on the window of every new vehicle in dealer showrooms. As the final fuel economy label rule is developed, EPA and DOT are working to harmonize the label with CARB and the FTC labels. This was recommended by an auto industry representative during the public comment process for this Plan. Final action is projected for June 2011.
- Vehicle greenhouse gas and fuel-economy standards compliance harmonization with DOT and CARB – EPA and DOT's National Highway Transportation Safety Administration 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. 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. EPA expects to propose standards in September 2011.
- Vehicle 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. EPA expects to propose new vehicle and fuel standards in late 2011.

2.1.13 Multiple air pollutants: coordinating emission reduction regulations and using innovative technologies

EPA intends to explore ways to reduce emissions of multiple 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. Next steps include:

- Issuance of a proposed rulemaking for the Maximum Achievable Control Technology (MACT) Risk and Technology Review for Pulp and Paper Industry (Subpart S) and Chemical Recovery Combustion Sources (Subpart MM), and New Source Performance Standards (NSPS) review for Kraft Pulp Mills. It is important that the Kraft NSPS and other MACT regulations for the pulp and paper industry (e.g., Subpart S and Subpart MM) be considered together to account for the interactions and collateral benefits or dis-benefits between the emitted criteria pollutants and

hazardous air pollutants (HAPs). This industry-specific "sector" approach will allow for the following:

- 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).
- Opportunity to consider industry-specific technology-based solutions (e.g., energy efficiency).
- Model risk from *most* of the HAP-emitting processes at the facility.
- Put *most* of the regulated processes on the same review cycle.
- Flexibility in compliance alternatives.

- Due to a court ordered deadline, the first step in executing this strategy will be the modification of Subpart S following the risk and technology review. A proposed rule is anticipated in summer 2011. The other actions will follow.

2.1.14 New Source Performance Standards (NSPS) reviews and revisions: setting priorities to ensure updates to outdated technologies

The Clean Air Act 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. In particular, EPA expects 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 will 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. This approach will allow the NSPS review process to be made more efficient, so that both public and private resources can be focused where it makes the most sense.

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

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. Yet, many perceive that technology

choices can be inflexible and fixed through regulation, creating a disincentive for innovation as technology, markets, and other conditions change.

During retrospective reviews and new rulemakings, EPA intends to assess innovative technology opportunities and market drivers, and implement a strategy to enhance the degree to which EPA's regulatory processes leverage market opportunities and encourage continued development of new sustainable technologies to achieve improved environmental results at lower costs. Likewise, 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 will 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.

The Agency also intends to move forward with other activities to support technological innovation. For example, EPA is participating in the California Technology Initiative, a technology demonstration partnership which includes the South Coast and San Joaquin Air Management Districts, the State of California, and the private sector. The Initiative is an opportunity for business to demonstrate and help bring to market new clean air and clean energy technologies that have the potential to reduce the costs of compliance with existing regulations, as well as create economic development and new jobs. Initial technology demonstrations are expected to be up and running by spring 2012.

2.1.16 ** The costs of regulations: improving cost estimates

EPA intends to evaluate the degree to which the following differ:

- Costs estimates developed prior to the issuance of a regulation (ex-ante costs); and
- Actual costs that are realized after regulated entities begin complying with the regulation (ex-post costs).

EPA intends to explore, through an analysis initially focusing on 5 rules, possible sources of uncertainty and reasons why predictive cost estimates and estimates of actual 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. The

overall goal of this project is to identify ways EPA can improve our estimates of compliance costs to better predict what a regulation will cost. The Agency plans to complete a draft final report of our retrospective analysis of the first five rules by fall 2011.

2.2 Longer term actions

The 15 regulatory reviews listed here are part of EPA's initial list of 31 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 indicate those reviews which were suggested in one or more public comments.

1. ** E-Manifest: reducing burden
2. Electronic hazardous waste Site ID form: reducing burden
3. ** Consumer confidence reports for primary drinking water regulations: providing for the open exchange of information
4. ** Reporting requirements under Section 303(d) of the Clean Water Act (CWA): reducing burden
5. ** Export notification for chemicals and pesticides: reducing burden and improving efficiencies
6. ** Water quality trading: improving approaches
7. ** Water Quality Standard regulations: simplifying and clarifying requirements
8. ** State Implementation Plan (SIP) process: reducing burden
9. ** CAA Title V Permit programs: simplifying and clarifying requirements
10. ** National primary drinking water regulations for lead and copper: simplifying and clarifying requirements
11. Adjusting threshold planning quantities (TPQs) for solids in solution: reducing burden and relying on scientific objectivity
12. ** Certification of pesticide applicators: eliminating uncertainties and improving efficiencies
13. Polychlorinated biphenyls (PCB) reforms: improving efficiencies and effectiveness
14. Contaminants under the Safe Drinking Water Act (SDWA): coordinating regulatory requirements
15. **Section 610 reviews: coordinating requirements

2.2.1 **[8] E-Manifest: reducing burden

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 3002(a)(5) of the Resource Conservation and Recovery Act (RCRA) statute. 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

[8] Asterisks (**) preceding the heading of a review indicate those reviews which were suggested in one or more public comments.

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.

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.

While the development of a national e-Manifest system would entail an IT investment of about $6 million for hardware and software needs, with total intramural and extramural system development costs ranging from $9.3M to $26.6M, EPA believes that such a system would produce annual savings to waste handlers and regulators of about $80 million. The hazardous waste industry is on record supporting a user fee funded approach to developing and operating the e-Manifest, and EPA is currently supporting legislative and regulatory efforts to establish the e-Manifest system.

In the FY 2012 Congressional Budget Justification, EPA is requesting $2 million to begin the development of an electronic hazardous waste manifest system. The Agency intends to submit 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. Were legislation to be enacted, EPA expects we would be able to finalize a rule within the milestones established in that legislation.

2.2.2 Electronic hazardous waste Site ID form: reducing burden

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. Online electronic reporting of the Site ID form can reduce burden and costs for the regulated entities by eliminating the costs associated with printing and mailing this information to EPA. The regulated community has indicated that these savings could be substantial; however, EPA has not done a formal burden/cost reduction analysis. EPA estimates an electronic Site ID form could be implemented within a year after the decision is made to move forward.

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

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 public involvement process for 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. 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.

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

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 waterbodies every two years under Section 305(b) is statutory. However, the requirement for states to identify impaired waters every two years under Section 303(d) is regulatory. States have raised concerns that reporting this information every two years is a significant burden. EPA intends to work with the public and states to identify the impact of changing this reporting cycle. EPA plans to review this activity by June 2012.

2.2.5 ** Export notification for chemicals and pesticides: reducing burden and improving efficiencies

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 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 among 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.

EPA is currently developing a workplan for completing this review effort within the next 12 months. As a first step in this effort, EPA intends to carefully review the related comments received during the public involvement process for this Plan. The Agency intends to identify a timeline and process for engaging stakeholders in this review.

2.2.6 ** Water Quality Trading: improving approaches

In 2003, EPA issued its final Water Quality Trading Policy, 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. This policy has been a success in encouraging states and stakeholders to give greater attention to market-based approaches for achieving pollutant reductions beyond the technology-based requirements of the Act. However, EPA believes that significant, cost-effective pollutant reductions, particularly from non-point sources, remain untapped, and will explore ways to revise the policy based on lessons learned over the past eight years and public input. EPA intends to begin this process with a workshop or other forum to solicit ideas from the public on barriers to trading under the

current policy, and ways to reduce these barriers. The focus is expected to be on seeking improved approaches that promote trading in ways that "share" the gains from increased efficiency, so as to provide reasonable further progress toward attainment of water quality goals and simultaneously reduce costs and promote economic growth. EPA intends to begin this process with a workshop or other forum to be held in 2012.

2.2.7 ** Water Quality Standard regulations: simplifying and clarifying requirements

EPA intends to propose a targeted set of changes to the water quality standard (WQS) regulations to improve its effectiveness in helping restore and maintain the Nation's waters. The core of the current WQS regulation has been in place since 1983, and provides limited guidance on recurring implementation issues. The proposed rule is expected to provide clarity in the following six key areas: 1) antidegradation, 2) Administrator's determination, 3) uses, 4) variances; 5) triennial review scope and requirements, and 6) updating regulation to reflect court decisions. This action will allow EPA to better achieve program goals by providing enhanced water resource protection and greater flexibility in meeting Water Quality Standards in appropriate circumstances.

2.2.8 ** State Implementation Plan (SIP) process: reducing burden

EPA intends to review the administrative steps states must follow when they adopt and submit State Implementation Plans that describe how they will attain and maintain the National Ambient Air Quality Standards, with the goal of reducing and eventually eliminating the paper (hardcopy) submittals of SIP revisions in favor of electronic submittals. A number of simplifying changes have recently been communicated to the states as guidance. These changes will eliminate the need for many formal hearings on matters of no public interest, expensive advertisements in newspapers with low readership, and 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).

Additional changes that may involve rulemaking include the following:

- Continuing to pursue options for reducing and eventually eliminating the paper (hardcopy) submittals of SIP revisions in favor of electronic submittals.
- Determining whether additional types of non-substantive SIP revisions may be added to the list of actions appropriate for Letter Notice.
- Exploring other modifications that would provide less rigorous notice and comment requirements for such non-substantive SIP revisions.

The timeframes for these milestones will be determined at a later date.

2.2.9 ** CAA Title V Permit programs: simplifying and clarifying requirements.

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 and final permits and typically post permits on their websites. This avoids any 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 its plan to implement Executive Order 13563. In addition, 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. Taking advantage of advice and ideas from all 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. Activities may include consideration of electronic filing of applications, including supporting material such as reports. The timeframe for action will be determined at a later date.

2.2.10 ** National primary drinking water regulations for lead and copper: simplifying and clarifying requirements

On June 7, 1991, EPA published a regulation to control lead and copper in drinking water. This regulation is known as the Lead and Copper Rule (also referred to as the LCR). The treatment technique for the rule requires 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. The LCR review is 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. EPA currently expects to issue a proposed rulemaking in spring 2012.

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

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. 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 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 standards, and will be completed by fall 2012.[9] The burden reduction is estimated to be minimal because the required notification is a one-time reporting (unless significant changes occur) and the rule change only affects facilities who have not yet reported. These facilities may handle other EHS chemicals that would trigger the emergency planning requirements anyway. Comments on the proposed rule are due June 15 and so far the Agency has received one comment, which is in favor of the proposal.

2.2.12 ** Certification of pesticide applicators: eliminating uncertainties and improving efficiencies

EPA intends to review regulations for certification and training of pesticide applicators (40 CFR 171). 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 and 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. EPA intends to propose improvements to these regulations in 2012.

2.2.13 Polychlorinated biphenyls (PCB) reforms: improving efficiencies and effectiveness

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 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 Toxics 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

[9] More information about TPQs for EHSs: http://www.epa.gov/oem/content/epcra/epcra_ammend.htm.

effective PCB cleanups, for example with respect to PCB-contaminated caulk. EPA has already started looking for opportunities to improve PCB cleanup guidance and will be working with states to identify areas for focus. Also, 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.

2.2.14 Contaminants under the Safe Drinking Water Act (SDWA): coordinating regulatory requirements

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. 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. EPA expects to issue a proposed rulemaking in the fall of 2013.

2.2.15 **Section 610 reviews: coordinating requirements

Under section 610 of the Regulatory Flexibility Act, EPA is required to review its 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 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 is section 610 reviews with other reviews. 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 and from the Agency's regulatory experts. In parallel efforts, we sought to learn how public and Agency stakeholders 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 and EPA regulatory experts.

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 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 where members of the public could submit written comments about how EPA should design the Plan. 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. And finally, EPA issued a *Federal Register* (FR) notice[10] to ensure that people who lacked Internet access could read EPA's call for public comment.

[10] EPA issued a *Federal Register* (FR) notice on February 23, 2011, to announce the public comment period and public meeting. EPA subsequently issued a second FR notice on March 18th to extend the comment period. The respective citations are:
[cont'd. on next page]

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.) 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.

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. Over 1,400 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.

While EPA has read all of the comments, the Agency has yet to process and address each one. In keeping with OMB guidance,[11] EPA intends to further consult with the public in May or June. EPA intends to consider the comments it has yet to process, as well as new input received in May or June, and may make updates to this Plan and/or the list of initial regulations we intend to review. Upon processing all of the public's input, however, the Agency may decide that no further additions will be made until future review periods.

Even if a suggested regulatory review is not taken up in this first review period, we do not intend to forget it. While it is impossible to conduct – all at one time – the many reviews that were suggested in public comments, the comments will be retained in 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.

- "Improving EPA Regulations; Request for Comment; Notice of Public Meeting," 76 FR 36 (23 February 2011), pp. 9988 – 9990, http://www.gpo.gov/fdsys/pkg/FR-2011-02-23/pdf/2011-4152.pdf.
- "Extension of Comment Period: EPA's Plan for Retrospective Review Under Executive Order 13563," 76 FR 53 (18 March 2011), pp. 14840 – 14841, http://www.gpo.gov/fdsys/pkg/FR-2011-03-18/pdf/2011-6413.pdf.

[11] Memorandum from Cass R. Sunstein, Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, to Heads of Executive Departments and Agencies. "Retrospective Analysis of Existing Significant Regulations," 25 April 2011, http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-19.pdf.

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 indentified 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 regulatory to identify regulatory requirements that may be "outmoded, ineffective, insufficient, or excessively burdensome," as directed by EO 13563. While some of these regulatory revisions 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.

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 preliminary plan, consistent with law and its resources and regulatory priorities, under which the agency will ***periodically*** review its existing significant regulations…" (emphasis added).[12] 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 Administrator. Going forward, the RPO intends to work toward finalizing this Plan; manage and oversee the execution of future retrospective reviews; report on EPA's progress; and evaluate the Plan.

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 Agency also intends to ask for input from EPA's rule-writing experts. Every five years, the Agency intends to follow a four-step process for retrospective reviews:

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 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 and resources, 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.

[12] Executive Order 13563, http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf

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 Rulemaking Gateway.

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 Rulemaking Gateway, 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.

As mentioned in section 3, EPA intends to seek further public consultation in May or June 2011 once a preliminary version of this Plan is complete. After this public consultation, the Agency may make updates to this Plan and/or the list of initial regulatory reviews. Even if a suggested regulatory review is not taken up in this first review period, we do not intend to forget it. While it is impossible to conduct – at one time – all of the reviews that were suggested in the public comments we have received, all comments will be retained in publicly accessible Regulations.gov dockets, and EPA intends to once again review these ideas in future five-year review periods.

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) 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)."[13] This principle corresponds to the "Benefits justify costs" heading below. During Step 2, EPA would answer a general question such as "Are there benefit and cost estimates related to this regulation that warrant review at this time?" During Step 3, the Agency would conduct a more detailed retrospective benefit-cost analysis to understand if the benefits of 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?

- **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?

[13] General Principles of Regulation," Section 1 of Executive Order 13,563, 76 FR 3821 (January 21, 2011), http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.

- **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 and will continue to be 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 – such as the *Semiannual Regulatory Agenda* and the Rulemaking Gateway – 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.

  EPA's Rulemaking Gateway is a website that allows the public to track regulations that are under development. Updates are made to the Gateway on a monthly basis, and in the case of more time-sensitive information, on a daily basis. Between the twice yearly publications of the *Semiannual Regulatory Agenda*, the Gateway is expected to serve as a resource for the public to obtain updates on regulatory reviews. By the end of 2011, the Agency intends to redesign the Gateway to include retrospective review information.

  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.

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

- **Making available numerous 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. The Agency intends to make the following contact information easily accessible on the

Rulemaking Gateway, EPA's Open Government website, and in all materials and media related to the Plan:

Email: 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

Advertising contact information on major EPA websites:

- www.epa.gov/open
- Rulemaking Gateway
- Laws & Regulations
- RegStat

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, EPA intends to provide a brief yearly summary of activities in EPA's *Regulatory Plan*, which annually accompanies the fall *Semiannual Regulatory Agenda*. Finally, the Agency intends to provide tracking information to the public on a monthly basis – in some cases, daily basis – via EPA's Rulemaking Gateway. EPA plans to link these tracking tools 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 Plan*, 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

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 a comment period that ran from 02/18/2011 to 04/04/2011, EPA accepted public comments on how to design this Plan. This non-exhaustive list of questions was provided to help the public formulate their ideas but was not intended to restrict the issues that they 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 3rd 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?