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FEDERAL RULEMAKING

Regulatory Review Processes Could Be Enhanced

Statement of Michelle Sager, Director, Strategic Issues

GAO Highlights

Highlights of [GAO-14-423T](#), a testimony before the Subcommittee on the Efficiency and Effectiveness of Federal Programs and the Federal Workforce, Committee on Homeland Security and Governmental Affairs, U.S. Senate

Why GAO Did This Study

Federal regulation is a basic tool of government. Agencies issue thousands of regulations each year to achieve public policy goals such as ensuring that workplaces, air travel, foods, and drugs are safe; that the nation's air, water and land are not polluted; and that the appropriate amount of taxes is collected. Congresses and Presidents have taken a number of actions to refine and reform the regulatory process over the last several decades. Among the goals of such initiatives are enhancing oversight of rulemaking by Congress and the President, promoting greater transparency and participation in the process, and reducing regulatory burdens on affected parties.

Over the past two decades Congress has often asked GAO to evaluate the implementation of procedural and analytical requirements that apply to the rulemaking process. The importance of improving the transparency of the rulemaking process emerged as a common theme throughout GAO's body of work. Based on that body of work, this testimony addresses (1) GAO's findings and recommendations regarding federal agencies' retrospective reviews, (2) GAO's findings and OIRA's progress to date on GAO recommendations to improve the transparency of the regulatory review process, and (3) other opportunities for increasing congressional oversight and public participation in the rulemaking process.

GAO is not making recommendations in this testimony.

View [GAO-14-423T](#). For more information, contact Michelle Sager, 202-512-6806 or sagem@gao.gov.

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What GAO Found

In 2007, GAO found that agencies had conducted more retrospective reviews of the costs and benefits of existing regulation than was readily apparent, especially to the public. Requirements in statutes or executive directives were sometimes the impetus for reviews, but agencies more often conducted these retrospective reviews based on their own discretionary authorities. Agencies reported that discretionary reviews more often generated actions, such as amending regulations or changes to guidance. GAO also found that multiple factors, such as data limitations and lack of transparency, impeded agencies' reviews. GAO made 7 recommendations in 2007 to improve the effectiveness and transparency of retrospective regulatory reviews. Among GAO's recommendations were: minimum standards for documenting and reporting completed review results; including public input as a factor in regulatory review decisions; and consideration of how agencies will measure the performance of new regulations. In 2011 and 2012, the administration issued new directives to agencies on how they should plan and conduct analyses of existing regulations that addressed each of GAO's recommendations.

By executive order, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) reviews draft proposed and final rules from executive agencies, other than independent regulatory agencies. Among the purposes of these reviews are ensuring that regulations are consistent with applicable law and the President's priorities and that decisions made by one agency do not conflict with the policies or actions taken or planned by another. Both OIRA and executive agencies are also required to disclose certain information about the review process. In 2003 and 2009, GAO found that the OIRA regulatory review process often resulted in changes to agencies' rules, but the transparency and documentation of the review process could be improved. GAO made 12 recommendations to OMB about the review process. For example, GAO recommended that OMB provide guidance to agencies regarding documentation of the reasons for an agency's withdrawal of a draft rule from OIRA review and the source or impetus of changes made to rules. OMB to date has implemented only 1 of those 12 recommendations—to clarify information posted about the topic and participants in meetings with outside parties on rules under review. GAO believes that its past recommendations still have merit and would improve the transparency of the OIRA review process.

GAO's recent work continues to highlight progress in facilitating transparency and public participation as well as room for improvement. In 2012, GAO found that agencies often requested comments when issuing major rules without a notice of proposed rulemaking but missed an opportunity to improve those rules because they did not always respond to the comments. GAO's 2013 review of international regulatory cooperation also found opportunities to better facilitate public participation in these activities. GAO also found that effective international regulatory cooperation requires interagency coordination and effective collaboration with federal agency officials' foreign counterparts. Agency officials stated that they cooperate with their foreign counterparts (1) because they are operating in an increasingly global environment and many products that agencies regulate originate overseas and (2) in an effort to gain efficiencies—for example, by sharing resources or avoiding duplicative work.

Chairman Tester, Ranking Member Portman, and Members of the Subcommittee:

I am pleased to be here today to discuss the federal rulemaking process, focusing in particular, at your request, on agencies' efforts to retrospectively review their existing rules¹ and the regulatory review process coordinated through the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA).

Federal regulation is a basic tool of government. Agencies issue thousands of regulations each year to achieve public policy goals such as ensuring that workplaces, air travel, food, and drugs are safe; that the nation's air, water, and land are not polluted; and that the appropriate amount of taxes is collected. Congresses and Presidents have taken a number of actions to refine and reform the regulatory process over the past 30 years. Among the goals of such initiatives are enhancing oversight of rulemaking by Congress and the President, promoting greater transparency and participation in the process, and reducing regulatory burdens on affected parties. OIRA is a key player in the regulatory process with its responsibility for ensuring that regulations are consistent with applicable law, the President's priorities, and the principles set forth in executive orders, among other things.

During the past two decades Congress has often asked GAO to evaluate the implementation of procedural and analytical requirements that apply to the rulemaking process.² Drawing on that body of work, my remarks today will specifically summarize (1) our findings and recommendations regarding federal agencies' retrospective regulatory reviews, (2) our

¹There is no one standard definition for the variety of activities that might be considered retrospective regulatory reviews. For purposes of this statement, the term retrospective review generally means any assessment of an existing regulation, for purposes of determining whether (1) the expected outcomes of the regulation have been achieved; (2) the agency should retain, amend, or rescind the regulation; and/or (3) the actual benefits and costs of the implemented regulation correspond with estimates prepared at the time the regulation was issued.

²Under the Congressional Review Act, we also provide the Congress with a report on each major rule containing our assessment of whether the promulgating federal agency's submissions to us indicate that it has complied with the procedural steps required by various acts and Executive Orders governing the regulatory process. A major rule is one that, among other things, has resulted in or is likely to result in an annual effect on the economy of \$100 million or more.

findings and OIRA's progress to date on our recommendations to improve the transparency of the regulatory review process, and (3) other opportunities our work has identified for increasing congressional oversight and public participation in the rulemaking process.

My testimony today is primarily based on prior reports and testimonies on the rulemaking process prepared at the request of Congress.³ We have updated some of the references in this statement to reflect more recent executive orders and related OMB guidance. We used multiple methodologies to develop the findings, conclusions, and recommendations for these prior products. A more detailed discussion of prior reports' objectives, scope, and methodology, including our assessment of data reliability, is available in the reports cited in the related products list at the end of this statement. The work upon which this testimony is based was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In brief, the importance of improving the transparency of the rulemaking process emerged as a common theme throughout our prior body of work. In 2007, we found that agencies were conducting many more retrospective reviews of their existing regulations than was readily apparent to non-federal parties, and documentation and reporting on results of those reviews was often lacking. In a series of products from 1996 through 2009 examining implementation of the OIRA regulatory review process, we consistently found that OIRA's reviews of agencies' draft rules often resulted in changes, but the transparency and documentation of the review process could be improved. However, OIRA only implemented 1 of our 12 most recent recommendations on this OIRA regulatory review process. Our recent work has continued to highlight both progress made in facilitating transparency, oversight, and public participation in regulatory actions as well as room for improvement.

³A selected list of related GAO products is included at the end of this statement.

Executive Orders and OMB Guidance Addressed Our Prior Recommendations to Improve Effectiveness and Transparency of Retrospective Reviews

In 2007, we evaluated retrospective review activities conducted between 2001 and 2006 by nine agencies covering health, safety, environmental, financial, and economic regulations.⁴ Agencies reported that the main purpose of most of their reviews was to examine the effectiveness of the implementation of regulations. We found that the agencies had conducted more retrospective reviews, and a greater variety of these reviews (such as ones examining the efficiency and effectiveness of regulations and others identifying opportunities to reduce regulatory burdens) than was readily apparent, especially to the public. Reviews mandated by requirements in statutes or executive orders and related OMB memorandums were sometimes the impetus for reviews, but agencies more often exercised their own discretionary authorities to review regulations. As a result of these reviews, agencies amended regulations, changed guidance and related documents, decided to conduct additional studies, and confirmed that existing rules achieved the intended results. Agencies noted that discretionary reviews generated additional action more often than mandatory reviews, which most often resulted in no changes.

We also found that agencies, to varying extents, were developing written procedures, processes, and standards to guide how they select which rules to review, analyze those rules, and report the results. Multiple factors helped or impeded the conduct and usefulness of retrospective reviews. Agencies identified time and resources as the most critical barriers, but also cited factors such as data limitations and overlapping or duplicative review requirements. Nonfederal parties also identified a lack of transparency in agency review processes as a barrier and said they were rarely aware of the agencies' reviews. We made seven recommendations for executive action in the 2007 report to improve the effectiveness and transparency of retrospective regulatory reviews.⁵ Among the elements that we recommended incorporating in policies, procedures, or guidance were: minimum standards for documenting and reporting completed review results; inclusion of public input as a factor in regulatory review decisions; and consideration of how agencies will measure the performance of new regulations.

⁴GAO, *Reexamining Regulations: Opportunities Exist to Improve Effectiveness and Transparency of Retrospective Reviews*, [GAO-07-791](#) (Washington, D.C.: July 16, 2007).

⁵Appendix I lists the relevant recommendations from our prior reports and indicates whether or not each recommendation has been implemented.

OMB took actions that addressed our recommendations which, if effectively implemented, will improve the transparency, credibility, and effectiveness of agencies' retrospective review efforts. For example, in 2011 and 2012, the administration issued new directives to agencies on how they should plan and conduct analyses of existing regulations, among other subjects, that addressed each of our prior recommendations.⁶ Collectively, they directed executive agencies and encouraged independent regulatory agencies to develop and implement plans to periodically review existing significant regulations.⁷ OMB's guidance on the 2011 and 2012 executive orders advised agencies to identify in their final plans specific reforms and initiatives that will significantly reduce existing regulatory burdens and promote economic growth and job creation.

We are currently completing a report at the request of Senators Ron Johnson and Mark Warner concerning agencies' retrospective regulatory analyses under the 2011 and 2012 executive orders. The report will identify for selected agencies (1) the results and anticipated outcomes of completed retrospective analyses included in agencies' review plans and progress reports, (2) strategies, practices, or factors that facilitated or limited agencies' ability to implement retrospective analyses, and (3) the extent to which agencies are incorporating retrospective analyses into their processes for measuring and achieving agency priority goals.

⁶These directives included Executive Orders 13563, 13579, and 13610, along with related OMB memoranda. The three executive orders were published at 76 Fed. Reg. 3821 (Jan. 21, 2011), 76 Fed. Reg. 41,587 (July 14, 2011), and 77 Fed. Reg. 28,469 (May 14, 2012). We also addressed these recommendations to the Chief Counsel for Advocacy within the Small Business Administration, to enhance guidance that the Office of Advocacy provides to agencies on compliance with retrospective reviews conducted under the Regulatory Flexibility Act. (See 5 U.S.C. § 610.) The Office of Advocacy also took actions to implement each of our recommendations.

⁷Executive Order 12866 defines significant regulatory actions as those that are likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. The order further directs executive branch agencies to conduct and submit to OIRA a regulatory analysis for economically significant regulations (those rules under the first item in the definition above).

Aspects of the OIRA Regulatory Review Process Could Be More Transparent

In a series of products from 1996 through 2009 examining implementation of the OIRA regulatory review process, we consistently found that OIRA's reviews of agencies' draft rules often resulted in changes, but the transparency and documentation of the review process could be improved. Unfortunately, as I will detail below, to date, OIRA has implemented only 1 of our 12 most recent recommendations on this process.

A brief explanation of OIRA's review process provides helpful context for understanding why these findings and recommendations remain relevant today. Centralized presidential reviews of agency's regulations have a long history and can be traced back to a program established by President Nixon in 1971. President Reagan's Executive Order 12291 in 1981 expanded the scope of presidential reviews of rulemakings and delegated responsibility for this review function to OIRA.⁸ President Clinton's issuance of Executive Order 12866 in 1993 established the current process and requirements regarding reviews of covered agencies' draft proposed and final rules. More recently, in 2011, President Obama issued Executive Order 13563, which supplemented and reaffirmed the principles, structures, and definitions governing contemporary regulatory review established in the 1993 executive order. The basic procedures and requirements for the regulatory review process today follow the provisions of that 1993 executive order. This practice of centralized regulatory reviews is now well established as part of the rulemaking process, although it continues to attract some controversy and criticism.

In essence, OIRA is responsible for the coordinated review of agencies' draft proposed and final rules to ensure that regulations are consistent with applicable law, the President's priorities, and the principles set forth in executive orders. OIRA is also to ensure that decisions made by one agency do not conflict with the policies or actions taken or planned by another agency. Executive agencies, except for independent regulatory agencies, are required to submit their significant regulatory actions to OIRA for review. OIRA is generally required to complete its review within

⁸OIRA was created within OMB as part of the Paperwork Reduction Act of 1980. 44 U.S.C. 3503.

90 days after an agency formally submits a draft regulation.⁹ The review process can be summarized as follows:

- OIRA reviews agencies' draft rules at both the proposed and final stages of rulemaking. In each phase, the rulemaking agency submits a regulatory review package to OIRA (consisting of the rule, any supporting materials, and a transmittal form) and OIRA initiates a review.
- During the review process, OIRA analyzes the draft rule in light of executive order principles and discusses the package with staff and officials at the rulemaking agency, as well as with other agencies with which interagency coordination will be necessary. In the course of that process, the draft rule that is submitted by the agency often changes. In some cases, agencies withdraw the draft rule from OIRA during the review period and the rule may or may not be subsequently resubmitted to OIRA.
- At the end of the review period, OIRA either concludes that the draft rule is consistent with the principles of the executive order (which occurs in the vast majority of cases) or returns the rule to the agency "for further consideration."¹⁰
- If a draft rule that was determined to be consistent with the executive order has been modified in the course of the review, the rule is coded in the OIRA database as "consistent with change" (regardless of the source or extent of the change). If no changes have been made to the draft rule during the review, the rule is coded as "consistent without change." OIRA only codes rules as "consistent without change" if they are exactly the same at the end of the review period as the original submission. Even editorial changes made at the rulemaking agency's initiative can cause a rule to be coded "consistent with change."

⁹The order provides that the review process may be extended (1) once by no more than 30 calendar days upon the written approval of the Director of OMB and (2) at the request of the agency head.

¹⁰Information about regulatory actions under OIRA review, and the outcomes of reviews, is available through <http://www.reginfo.gov>.

Executive Order 12866 also contains several transparency provisions that require both OIRA and agencies to disclose certain information about the OIRA review process. For example, the order requires OIRA to disclose information about communications between OIRA and persons not employed by the executive branch pertinent to rules under OIRA's review and, if OIRA returns a rule to the issuing agency for reconsideration, the executive order requires OIRA to provide a written explanation for the return. If a rule is withdrawn from OIRA review, however, the order has no requirement for OIRA or the regulatory agency to provide a written explanation. After the rule has been published in the *Federal Register* or otherwise issued to the public, the regulatory agency publishing the rule is required to

- make available to the public the information provided to OIRA in accordance with the executive order;
- identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA and the action subsequently announced; and
- identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

These transparency requirements and documentation are not simply a matter of administrative paperwork. Agencies' documentation of the OIRA review process and its outcomes become part of the regulatory docket for each rulemaking.¹¹ The docket publicly documents the support and basis for decisions made about the substance of the rule, thus serving as a source of information for decision makers, the general public, and for purposes of potential judicial review.

Since the issuance of Executive Order 12866, Congress has periodically asked us to examine the implementation of the OIRA regulatory review process.¹² Multiple products we issued from 1996 through 2009

¹¹A docket is a collection or repository of documents related to a rulemaking or other action.

¹²See, in particular, GAO, *Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews*, [GAO-09-205](#) (Washington, D.C.: Apr. 20, 2009); *Rulemaking: OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews*, [GAO-03-929](#) (Washington, D.C.: Sept. 22, 2003); and *Regulatory Reform: Changes Made to Agencies' Rules Are Not Always Clearly Documented*, [GAO/GGD-98-31](#) (Washington, D.C.: Jan. 8, 1998).

consistently found that the OIRA regulatory review process often resulted in changes to agencies' rules but the transparency and documentation of the review process could be improved. For example, in 2003, we examined 85 rules from nine health, safety, or environmental agencies that had been changed, returned or withdrawn as a result of the OIRA review process. We found that the OIRA review process had significantly affected 25 of those 85 rules. While almost all returned rules were from the Department of Transportation, the rules that were most often significantly changed were from the Environmental Protection Agency. OIRA's suggestions appeared to have at least some effect on almost all of the 25 rules' potential costs and benefits or the agencies' estimates of those costs and benefits. The agencies' docket files did not always provide clear and complete documentation of the changes made during OIRA's review or at OIRA's suggestion, as required by the executive order, though a few agencies exhibited exemplary transparency practices.

In 2009, we again found that OIRA's reviews of agencies' draft rules often resulted in changes. Of our 12 case-study rules subject to OIRA review, 10 reviews resulted in changes, about half of which included changes to the regulatory text. Agencies used various methods to document OIRA's reviews and these methods generally met disclosure requirements. However, we found that agencies could improve the transparency of this documentation. In particular, agencies did not always clearly attribute changes made at the suggestion of OIRA. Additionally, agencies' interpretations were not necessarily consistent regarding what constitutes a substantive change that should be documented to comply with the executive order transparency requirements. Both of these issues had been identified in our earlier work.¹³

In our 2003 and 2009 reports, we made a total of 12 recommendations to OMB about the review process under Executive Order 12866 (see appendix I for a list of the recommendations). In 2003 we made 8 recommendations targeting several aspects of the OIRA review process that remained unclear and where improvements could allow the public to better understand the effects of OIRA's review. For example, these aspects included addressing a lack of documentation requirements regarding (1) staff-level exchanges during the review process, (2) the reasons for withdrawal of a rule, or (3) the source or impetus of changes

¹³See [GAO-03-929](#) and [GAO/GGD-98-31](#).

made to rules. In 2009, based on similar findings, we made 4 additional recommendations that OMB provide guidance to agencies to improve transparency and documentation of the OIRA review process. OMB generally agreed with the 4 recommendations in our 2009 report, but disagreed with 7 of the 8 recommendations in our 2003 report.

OIRA to date has implemented only 1 of those 12 recommendations—to more clearly indicate in the posted information which regulatory action was being discussed and the affiliations of participants when meeting with outside parties regarding draft rules under OIRA review. We believe that our past recommendations still have merit and, if acted upon, would improve the transparency of the OIRA review process. For example, regarding our recommendation that the Administrator of OIRA should establish procedures whereby either OIRA or the agencies disclose the reasons why rules are withdrawn from OIRA review, we note that OIRA's records on the outcomes of regulatory reviews indicate many more withdrawals, which currently require no explanation, than returns, which do require explanations.

Importantly, other organizations have raised concerns about the timeliness of OIRA regulatory reviews. In particular, the Administrative Conference of the United States (ACUS) issued a report and adopted a statement in December 2013 on improving the timeliness of OIRA's regulatory review process.¹⁴ ACUS noted an increase in average review times since 2011, including many reviews that extended well past the limits established in Executive Order 12866, while also acknowledging that OIRA had recently made progress in addressing the backlog. ACUS offered a set of principles for improving the timeliness of review and the transparency concerning the causes for delays, such as that OIRA should, whenever possible, adhere to the timeliness provisions of Executive Order 12866 and, if unable to complete the review of an agency's draft rule within a reasonable time—but in no event beyond 180 days after submission—should inform the public as to the reasons for the delay or return the rule to the submitting agency.

¹⁴See Administrative Conference Statement #18, *Improving the Timeliness of OIRA Regulatory Review*, adopted December 6, 2013. ACUS is an independent agency in the executive branch, established as an advisory agency in administrative law and procedure. ACUS has broad authority to conduct studies and make recommendations for improving the efficiency, adequacy, and fairness of the procedures agencies use in carrying out administrative programs.

Additional Opportunities Exist to Facilitate Congressional Oversight and Public Participation in the Rulemaking Process

Our recent work has continued to highlight both progress made in facilitating transparency, oversight, and public participation in regulatory actions as well as room for improvement. Improvements made in transparency of the rulemaking process benefit not only the public but also congressional oversight. In 2012, we reviewed a generalizable random sample of 1,338 final rules published during calendar years 2003 through 2010 to provide information on the frequency, reasons for, and potential effects of agencies issuing final rules without a notice of proposed rulemaking (NPRM). Before issuing a final rule, agencies are generally required to publish an NPRM in the *Federal Register*. Agencies must then respond to public comments when issuing final rules. However, agencies may use exceptions in certain circumstances to forgo this NPRM process to expedite rulemaking. For example, agencies may use the good cause exception when they find that notice and comment procedures are “impracticable, unnecessary, or contrary to the public interest.” We found that agencies frequently cited the good cause exception and other statutory exceptions to publish final rules without NPRMs. Agencies did not publish an NPRM for about 35 percent of major rules and about 44 percent of nonmajor rules published from 2003 through 2010.¹⁵

We found that agencies, though not required, often requested comments on major final rules issued without an NPRM, but they did not always respond to the comments received.¹⁶ For example, we found that agencies requested comments on 77 of the 123 major rules issued without an NPRM in our sample. The agencies did not issue a follow-up rule or respond to comments on 26 of these 77. This is a missed opportunity, because we found that, when agencies did respond to public comments, they often made changes to improve the rules. Each of these 26 rules is economically significant and some of these rules have an effect of one billion dollars a year or more. To better balance the benefits of expedited rulemaking procedures with the benefits of public comments that are typically part of regular notice-and-comment rulemakings, and improve the quality and transparency of rulemaking records, we

¹⁵GAO, *Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments*, [GAO-13-21](#) (Washington, D.C.: Dec. 20, 2012).

¹⁶Agencies may solicit comments through the *Federal Register* when publishing a final rule without an NPRM, but the public does not have an opportunity to comment before the rule’s issuance, nor is the agency obligated to respond to comments it has received.

recommended that OMB, in consultation with ACUS, issue guidance to encourage agencies to respond to comments on final major rules, for which the agency has discretion, that are issued without a prior notice of proposed rulemaking. OMB stated that it did not believe it necessary to issue guidance on the topic at that time and has not, to date, taken any action to implement our recommendation. We continue to believe that the recommendation has merit and urge OMB to reconsider its prior position.

In our 2013 review of international regulatory cooperation we again found opportunities to better facilitate public participation in regulatory activities. In that report, we noted the growing importance of considering regulations in an international context.¹⁷ Agency officials stated that they cooperate with their foreign counterparts (1) because they are operating in an increasingly global environment and many products that agencies regulate originate overseas and (2) in an effort to gain efficiencies—for example, by sharing resources or avoiding duplicative work.

Agencies' efforts to cooperate on regulatory programs may also facilitate trade and support the competitiveness of U.S. business. Agency officials we interviewed said that stakeholder involvement is important and nonfederal stakeholders are uniquely positioned to identify and call attention to unnecessary differences among U.S. regulations and those of its trading partners. However, stakeholders we spoke with, such as academics, organizations representing businesses, and consumer advocacy groups, said it can be challenging for them to provide input into agencies' international regulatory cooperation activities because of the required resources and the difficulty of becoming aware of such activities.

In addition to effective collaboration with affected nonfederal stakeholders, effective international regulatory cooperation requires interagency coordination and effective collaboration with federal agency officials' foreign counterparts. In an environment of constrained resources it is even more important for agencies to share knowledge on the effective implementation of international regulatory cooperation.

¹⁷GAO, *International Regulatory Cooperation: Agency Efforts Could Benefit from Increased Collaboration and Interagency Guidance*, [GAO-13-588](#) (Washington, D.C.: Aug. 1, 2013).

We recommended that the Regulatory Working Group, a forum chaired by the OIRA Administrator to assist agencies in identifying and analyzing important regulatory issues, establish one or more mechanisms to facilitate staff level collaboration on international regulatory cooperation issues and include independent regulatory agencies. Such a mechanism could be addressed as part of forthcoming guidance on Executive Order 13609. This May 2012 executive order on promoting international regulatory cooperation was intended to provide high-level support and direction for U.S. agencies' international regulatory cooperation efforts. The executive order directed agencies to consider addressing unnecessary differences in existing regulations and describes processes to help avoid regulatory divergence in the future. If implemented, our recommendation regarding a staff level collaboration mechanism could help ensure that U.S. agencies have the necessary tools and guidance to effectively implement international regulatory cooperation.¹⁸

Chairman Tester, Ranking Member Portman, and Members of the Subcommittee, this concludes my prepared statement. Once again, I appreciate the opportunity to testify on these important issues. I would be pleased to address any questions you or other members of the subcommittee might have at this time.

¹⁸See GAO, *Managing for Results: Implementation Approaches Used to Enhance Collaboration in Interagency Groups*, [GAO-14-220](#) (Washington, D.C.: Feb. 14, 2014); *Managing for Results: Key Considerations for Implementing Interagency Collaborative Mechanisms*, [GAO-12-1022](#) (Washington, D.C.: Sep. 27, 2012); and *Results-Oriented Government: Practices that Can Help Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: Oct. 21, 2005).

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Appendix I: Relevant GAO Recommendations on Regulatory Processes

Recommendation	Agency affected	Recommendation implemented ^a
Rulemaking: OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews, GAO-03-929: Published: Sep. 22, 2003.		
<p>The Director of the Office of Management and Budget should improve the implementation of the transparency requirements in the executive order that are applicable to rulemaking agencies. Specifically, the Administrator should instruct agencies to put information about changes made in a rule after submission for OIRA's review and those made at OIRA's suggestion or recommendation in the agencies' public rulemaking dockets, and to do so within a reasonable period after the rules have been published.</p>	<p>Executive Office of the President: Office of Management and Budget</p>	
<p>The Director of the Office of Management and Budget should improve the implementation of the transparency requirements in the executive order that are applicable to rulemaking agencies. Specifically, the Administrator should define the types of "substantive" changes during the OIRA review process that agencies should disclose as including not only changes made to the regulatory text but also other, noneditorial changes that could ultimately affect the rules' application (e.g., explanations supporting the choice of one alternative over another and solicitations of comments on the estimated benefits and costs of regulatory options).</p>	<p>Executive Office of the President: Office of Management and Budget</p>	
<p>The Director of the Office of Management and Budget should improve the implementation of the transparency requirements in the executive order that are applicable to OIRA. Specifically, the Administrator should establish procedures whereby either OIRA or the agencies disclose the reasons why rules are withdrawn from OIRA review.</p>	<p>Executive Office of the President: Office of Management and Budget</p>	
<p>The Director of the Office of Management and Budget should improve the implementation of the transparency requirements in the executive order that are applicable to OIRA. Specifically, OIRA should reexamine its current policy that only documents exchanged by OIRA branch chiefs and above need to be disclosed because most of the documents that are exchanged while rules are under review at OIRA are exchanged between agency staff and OIRA desk officers.</p>	<p>Executive Office of the President: Office of Management and Budget</p>	
<p>The Director of the Office of Management and Budget should improve the implementation of the transparency requirements in the executive order that are applicable to OIRA. Specifically, the Administrator should more clearly indicate in the meeting log which regulatory action was being discussed and the affiliations of the participants in those meetings.</p>	<p>Executive Office of the President: Office of Management and Budget</p>	✓
<p>The Director of the Office of Management and Budget should change OIRA's database to clearly differentiate within the "consistent with change" outcome category which rules were substantively changed at OIRA's suggestion or recommendation and which were changed in other ways and for other reasons.</p>	<p>Executive Office of the President: Office of Management and Budget</p>	
<p>The Director of the Office of Management and Budget should define the transparency requirements applicable to the agencies and OIRA in section 6 of Executive Order 12866 in such a way that they include not only the formal review period, but also the informal review period when OIRA says it can have its most important impact on agencies' rules. Doing so would make the trigger for the transparency requirements applicable to OIRA's and the agencies' interaction consistent with the trigger for the transparency requirements applicable to OIRA regarding its communications with outside parties.</p>	<p>Executive Office of the President: Office of Management and Budget</p>	

**Appendix I: Relevant GAO Recommendations
on Regulatory Processes**

Recommendation	Agency affected	Recommendation implemented ^a
<p>The Director of the Office of Management and Budget should improve the implementation of the transparency requirements in the executive order that are applicable to rulemaking agencies. Specifically, the Administrator should encourage agencies to use “best practice” methods of documentation that clearly describe those changes (e.g., like those used by the Food and Drug Administration, the Environmental Protection Agency’s Office of Water, or the Federal Motor Carriers Safety Administration).</p>	<p>Executive Office of the President: Office of Management and Budget</p>	✓
<p>Reexamining Regulations: Opportunities Exist to Improve Effectiveness and Transparency of Retrospective Reviews, GAO-07-791: Published July 16, 2007.</p>		
<p>The Director of the Office of Management and Budget, through the Administrator of the Office of Information and Regulatory Affairs (OIRA), and the Chief Counsel for Advocacy should develop guidance to regulatory agencies to consider or incorporate into their policies, procedures, or agency guidance documents that govern regulatory review activities consideration, during the promulgation of certain new rules, of whether and how they will measure the performance of the regulation, including how and when they will collect, analyze, and report the data needed to conduct a retrospective review. Such rules may include significant rules, regulations that the agencies know will be subject to mandatory review requirements, and any other regulations for which the agency believes retrospective reviews may be appropriate.</p>	<p>Executive Office of the President: Office of Management and Budget: Office of Information and Regulatory Affairs and the Small Business Administration: Office of Advocacy</p>	✓
<p>The Director of the Office of Management and Budget, through the Administrator of the Office of Information and Regulatory Affairs, and the Chief Counsel for Advocacy should develop guidance to regulatory agencies to consider or incorporate into their policies, procedures, or agency guidance documents that govern regulatory review activities prioritization of review activities based upon defined selection criteria. These criteria could take into account factors such as the impact of the rule; the length of time since its last review; whether changes to technology, science, or the market have affected the rule; and whether the agency has received substantial feedback regarding improvements to the rule, among other factors relevant to the particular mission of the agency.</p>	<p>Executive Office of the President: Office of Management and Budget: Office of Information and Regulatory Affairs and the Small Business Administration: Office of Advocacy</p>	✓
<p>The Director of the Office of Management and Budget, through the Administrator of the Office of Information and Regulatory Affairs, and the Chief Counsel for Advocacy should develop guidance to regulatory agencies to consider or incorporate into their policies, procedures, or agency guidance documents that govern regulatory review activities specific review factors to be applied to the conduct of agencies’ analyses that include, but are not limited to, public input to regulatory review decisions.</p>	<p>Executive Office of the President: Office of Management and Budget: Office of Information and Regulatory Affairs and the Small Business Administration: Office of Advocacy</p>	✓
<p>The Director of the Office of Management and Budget, through the Administrator of the Office of Information and Regulatory Affairs, and the Chief Counsel for Advocacy should develop guidance to regulatory agencies to consider or incorporate into their policies, procedures, or agency guidance documents that govern regulatory review activities minimum standards for documenting and reporting all completed review results. For reviews that included analysis, these minimal standards should include making the analysis publicly available.</p>	<p>Executive Office of the President: Office of Management and Budget: Office of Information and Regulatory Affairs and the Small Business Administration: Office of Advocacy</p>	✓

**Appendix I: Relevant GAO Recommendations
on Regulatory Processes**

Recommendation	Agency affected	Recommendation implemented ^a
<p>The Director of the Office of Management and Budget, through the Administrator of the Office of Information and Regulatory Affairs, and the Chief Counsel for Advocacy should develop guidance to regulatory agencies to consider or incorporate into their policies, procedures, or agency guidance documents that govern regulatory review activities mechanisms to assess their current means of communicating review results to the public and identify steps that could improve this communication. Such steps could include considering whether the agency could make better use of its agency Web site to communicate reviews and results, establishing an e-mail listserve that alerts interested parties about regulatory reviews and their results, or using other Web-based technologies (such as Web forums) to solicit input from stakeholders across the country.</p>	<p>Executive Office of the President: Office of Management and Budget: Office of Information and Regulatory Affairs and the Small Business: Office of Advocacy</p>	✓
<p>The Director of the Office of Management and Budget, through the Administrator of the Office of Information and Regulatory Affairs, and the Chief Counsel for Advocacy should develop guidance to regulatory agencies to consider or incorporate into their policies, procedures, or agency guidance documents that govern regulatory review activities steps to promote sustained management attention and support to help ensure progress in institutionalizing agency regulatory review initiatives.</p>	<p>Executive Office of the President: Office of Management and Budget: Office of Information and Regulatory Affairs and the Small Business: Office of Advocacy</p>	✓
<p>In light of overlapping and duplicative review factors in statutorily mandated reviews and the difficulties identified by agencies in their ability to conduct useful reviews with predetermined time frames, the Administrator of OIRA and Chief Counsel for Advocacy should work with regulatory agencies to identify opportunities for Congress to revise the timing and scope of existing regulatory review requirements and/or consolidate existing requirements.</p>	<p>Executive Office of the President: Office of Management and Budget: Office of Information and Regulatory Affairs and the Small Business: Office of Advocacy</p>	✓
<p>Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews, GAO-09-205: Published: Apr. 20, 2009.</p>		
<p>If the current administration retains Executive Order 12866, or establishes similar transparency requirements, to improve the monitoring and evaluation of rules development and the transparency of the review process, the Director of OMB, through the Administrator of OIRA, should define in guidance what types of changes made as a result of the OIRA review process are substantive and need to be publicly identified to more consistently implement the order's requirement to provide information to the public "in a complete, clear, and simple manner."</p>	<p>Executive Office of the President: Office of Management and Budget</p>	
<p>If the current administration retains Executive Order 12866, or establishes similar transparency requirements, to improve the monitoring and evaluation of rules development and the transparency of the review process, the Director of OMB, through the Administrator of OIRA, should direct agencies to clearly state in final rules whether they made substantive changes as a result of the OIRA reviews to more consistently implement the order's requirement to provide information to the public "in a complete, clear, and simple manner."</p>	<p>Executive Office of the President: Office of Management and Budget</p>	
<p>If the current administration retains Executive Order 12866, or establishes similar transparency requirements, to improve the monitoring and evaluation of rules development and the transparency of the review process, the Director of OMB, through the Administrator of OIRA, should standardize how agencies label documentation of these changes in public rulemaking dockets to more consistently implement the order's requirement to provide information to the public "in a complete, clear, and simple manner."</p>	<p>Executive Office of the President: Office of Management and Budget</p>	

**Appendix I: Relevant GAO Recommendations
on Regulatory Processes**

Recommendation	Agency affected	Recommendation implemented^a
<p>If the current administration retains Executive Order 12866, or establishes similar transparency requirements, to improve the monitoring and evaluation of rules development and the transparency of the review process, the Director of OMB, through the Administrator of OIRA, should instruct agencies to clearly attribute those changes “made at the suggestion or recommendation of OIRA to more consistently implement the order’s requirement to provide information to the public “in a complete, clear, and simple manner.”</p>	<p>Executive Office of the President: Office of Management and Budget</p>	
<p>Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments, GAO-13-21: Published: Dec. 20, 2012.</p>		
<p>To better balance the benefits of expedited rulemaking procedures with the benefits of public comments that are typically part of regular notice-and-comment rulemakings, and improve the quality and transparency of rulemaking records, the Director of OMB, in consultation with the Chairman of Administrative Conference of the United States (ACUS), should issue guidance to encourage agencies to respond to comments on final major rules, for which the agency has discretion, that are issued without a prior notice of proposed rulemaking.</p>	<p>Executive Office of the President: Office of Management and Budget</p>	
<p>International Regulatory Cooperation: Agency Efforts Could Benefit from Increased Collaboration and Interagency Guidance, GAO-13-588: Published: Aug. 1, 2013.</p>		
<p>To ensure that U.S. agencies have the necessary tools and guidance for effectively implementing international regulatory cooperation, the Regulatory Working Group, as part of forthcoming guidance on implementing Executive Order 13609, should establish one or more mechanisms, such as a forum or working group, to facilitate staff level collaboration on international regulatory cooperation issues and include independent regulatory agencies.</p>	<p>Executive Office of the President: Office of Management and Budget: Regulatory Working Group</p>	

Source: GAO.

^aCheckmarks indicate that the recommendation has been closed as implemented.

Related GAO Products

International Regulatory Cooperation: Agency Efforts Could Benefit from Increased Collaboration and Interagency Guidance. [GAO-13-588](#). Washington, D.C.: August 1, 2013.

Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments. [GAO-13-21](#). Washington, D.C.: December 20, 2012.

Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews. [GAO-09-205](#). Washington, D.C.: April 20, 2009.

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Federal Rulemaking: Past Reviews and Emerging Trends Suggest Issues That Merit Congressional Attention. [GAO-06-228T](#). Washington, D.C.: November 1, 2005.

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Regulatory Reform: Changes Made to Agencies' Rules Are Not Always Clearly Documented. [GAO/GGD-98-31](#). Washington, D.C.: January 8, 1998.

Regulatory Reform: Agencies' Efforts to Eliminate and Revise Rules Yield Mixed Results. [GAO/GGD-98-3](#). Washington, D.C.: October 2, 1997.

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