



## Retrospective Review of Agency Rules

### Committee on Regulation

Proposed Recommendation | December 4–5, 2014

#### Proposed Amendments

**This document displays manager’s amendments (with no marginal notes) and additional amendments from Conference members (with the source shown in the margin)**

#### Executive Summary

1 The following recommendation is intended to provide a framework for cultivating a  
2 “culture of retrospective review” within regulatory agencies. It urges agencies to remain  
3 mindful of their existing body of regulations and the ever-present possibility that those  
4 regulations may need to be modified, strengthened, or eliminated in order to achieve statutory  
5 goals while minimizing regulatory burdens. It encourages agencies to make a plan for  
6 reassessing existing regulations and to design new regulations in a way that will make later  
7 retrospective review easier and more effective. It recognizes that input from stakeholders is a  
8 valuable resource that can facilitate and improve retrospective review. Finally, it urges agency  
9 officials to coordinate with ~~sister~~other agencies and the Office of Management and Budget to  
10 promote coherence in shared regulatory space.

#### Preamble

11 Traditionally, federal regulatory policymaking has been a forward-looking enterprise:  
12 Congress delegates power to administrative agencies to respond to new challenges, and  
13 agencies devise rules designed to address those challenges. Over time, however, regulations  
14 may become outdated, and the cumulative burden of decades of regulations issued by  
15 numerous federal agencies can both complicate agencies’ enforcement efforts and impose a  
16 substantial burden on regulated entities. As a consequence, Presidents since Jimmy Carter  
17 have periodically undertaken a program of “retrospective review,” urging agencies to reassess  
18 regulations currently on the books and eliminate, modify, or strengthen those regulations that



19 have become outmoded in light of changed circumstances.<sup>1</sup> Agencies have also long been  
20 subject to more limited regulatory lookback requirements, including the Regulatory Flexibility  
21 Act, which requires agencies to reassess ten-year-old regulations having “a significant economic  
22 impact upon a substantial number of small entities,”<sup>2</sup> and program-specific retrospective  
23 review requirements erected by statute.<sup>3</sup>

24 Though historical retrospective review efforts have resulted in some notable successes,<sup>4</sup>  
25 especially in those instances in which high-level leadership in the executive branch and  
26 individual agencies has strongly supported these endeavors,<sup>5</sup> retrospective review of regulatory  
27 effectsions has not been held to the same standard as prospective review, and the various  
28 statutory lookback requirements apply only to subsets of regulations. President Barack Obama  
29 has sought to build on these initiatives in several executive orders. On January 18, 2011, he  
30 issued Executive Order (EO) 13,563,<sup>6</sup> which directed executive branch agencies regularly to  
31 reassess existing rules to identify opportunities for eliminating or altering regulations that have  
32 become “outmoded, ineffective, insufficient, or excessively burdensome.”<sup>7</sup> Shortly thereafter,  
33 he issued another order encouraging independent regulatory agencies to pursue similar

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<sup>1</sup> Joseph E. Aldy, *Learning from Experience: An Assessment of Retrospective Reviews of Agency Rules & the Evidence for Improving the Design & Implementation of Regulatory Policy* 3 (Sept. 17, 2014), available at <http://www.acus.gov/sites/default/files/documents/Aldy%20Retrospective%20Review%20Report%20CIRCULATED%2009-17-2014.pdf>.

<sup>2</sup> 5 U.S.C. § 610.

<sup>3</sup> Aldy, *supra* note 1, at 3.

<sup>4</sup> See generally MARTHA DERTHICK & PAUL J. QUIRK, *THE POLITICS OF DEREGULATION* (1985).

<sup>5</sup> See generally John Kamensky, National Partnership for Reinventing Government: A Brief History (Jan. 1999), available at <http://govinfo.library.unt.edu/npr/whoware/history2.html> (highlighting the successes of the Clinton Administration’s National Performance Review and emphasizing the importance of high-level executive branch and agency leadership).

<sup>6</sup> 76 Fed. Reg. 3821 (Jan. 21, 2011).

<sup>7</sup> *Id.* § 6.



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34 regulatory lookback efforts (EO 13,579<sup>8</sup>) and yet another order providing a more detailed  
35 framework for retrospective review in executive branch agencies (EO 13,610<sup>9</sup>).

36 The Administrative Conference has long endorsed agencies' efforts to reevaluate and  
37 update existing regulations. In 1995, the Conference issued a recommendation stating that  
38 "[a]ll agencies (executive branch or 'independent') should develop processes for systematic  
39 review of existing regulations to determine whether such regulations should be retained,  
40 modified or revoked" and offering general guidance by which agencies might conduct that  
41 analysis.<sup>10</sup> In addition, in early 2011, shortly after the promulgation of EO 13,563, the  
42 Conference hosted a workshop designed to highlight best practices for achieving the EO's  
43 goals.<sup>11</sup>

44 Administrative law scholars and other experts have debated the effectiveness of existing  
45 retrospective review efforts. EO 13,610 touts the elimination of "billions of dollars in regulatory  
46 costs and tens of millions of hours in annual paperwork burdens" achieved under the EO 13,563  
47 framework and promises additional savings.<sup>12</sup> Cass Sunstein, the former Administrator of the  
48 Office of Information and Regulatory Affairs (OIRA), has suggested that these initiatives have  
49 yielded billions of dollars in savings.<sup>13</sup> Nevertheless, many criticize the existing system of

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<sup>8</sup> 76 Fed. Reg. 41,587 (July 14, 2011).

<sup>9</sup> 77 Fed. Reg. 28,469 (May 14, 2012).

<sup>10</sup> Administrative Conference of the United States, Recommendation 95-3, *Review of Existing Agency Regulations*, 60 Fed. Reg. 43,108, 43,109 (Aug. 18, 1995).

<sup>11</sup> Administrative Conference of the United States, *Retrospective Review of Existing Regulations, Workshop Summary* (Mar. 10, 2011), <http://www.acus.gov/sites/default/files/documents/ACUS%20Retrospective%20Review%20Workshop%20Final%203-21.pdf>.

<sup>12</sup> Exec. Order No. 13,610, § 1, 77 Fed. Reg. 28,469, 28,469 (May 14, 2012).

<sup>13</sup> CASS R. SUNSTEIN, *SIMPLER: THE FUTURE OF GOVERNMENT 180-84* (2013) (highlighting successful retrospective review efforts, including a Department of Health and Human Services reform to reporting requirements saving \$5 billion over five years and a Department of Labor rule to harmonize hazard warnings with the prevailing international practice saving \$2.5 billion over five years); *see also* Memorandum from President Ronald Reagan on the Review of Federal Regulatory Programs (Dec. 15, 1986) (describing the results of the Presidential Task Force on Regulatory



50 regulatory lookback as inadequate, especially insofar as it relies upon individual agencies to  
51 reassess their own regulations and provides few incentives for ensuring robust analysis of  
52 existing rules.<sup>14</sup> From the opposite perspective, many criticize current retrospective review  
53 efforts as inherently deregulatory, possessing a strong bias in favor of eliminating or weakening  
54 regulations rather than strengthening regulations that may be insufficiently protective.<sup>15</sup>

55 Ultimately, a system of “self-review,” in which individual agencies are responsible for  
56 evaluating their own regulations and, to the extent permitted by law, modifying, strengthening,  
57 or eliminating those that are deemed to be outdated, can only succeed if agencies promote a  
58 “culture of retrospective review.”<sup>16</sup> Without a high-level enforcement oversight mechanisms,  
59 any regulatory lookback initiative runs the risk of devolving into an exercise of pro forma  
60 compliance. This might not be an inevitable outcome, however. If the relevant agency officials,  
61 including both those conducting retrospective reviews and those drafting new rules, come to  
62 view regulation as an ongoing process whereby agency officials recognize the uncertainty  
63 inherent in the policymaking exercise and continually reexamine their regulations in light of  
64 new information and evolving circumstances, a durable commitment can emerge.<sup>17</sup> Rather  
65 than regulatory review as a static, only backward-looking exercise, it should be present from  
66 the beginning as an on-going culture of evaluation and iterative improvement. Planning for  
67 reevaluation and regulatory improvement (including defining how success will be measured

**Comment [CMA1]:** Siciliano Amendment: Carol Ann Siciliano proposes replacing the phrase “Without high-level oversight mechanisms” with “Without a high-level commitment.”

Relief, which included “substantial changes to over 100 existing burdensome rules” that “sav[ed] businesses and consumers billions of dollars each year”).

<sup>14</sup> See, e.g., Reeve T. Bull, *Building a Framework for Governance: Retrospective Review & Rulemaking Petitions*, \_\_ ADMIN. L. REV. \_\_ (forthcoming 2015); Cary Coglianese, *Moving Forward with Regulatory Lookback*, 30 YALE J. ON REG. 57A, 60A (2013); Michael Mandel & Diana G. Carew, Progressive Policy Institute Policy Memo, *Regulatory Improvement Commission: A Politically Viable Approach to U.S. Regulatory Reform* 13 (May 2013).

<sup>15</sup> See, e.g., Michael A. Livermore & Jason A. Schwarz, *Unbalanced Retrospective Regulatory Review*, PENN PROGRAM ON REGULATION REG BLOG, July 12, 2012, <http://www.regblog.org/2012/07/12-livermore-schwartz-review.html>; Rena Steinzor, *The Real “Tsunami” in Federal Regulatory Policy*, CPR BLOG, May 22, 2014, <http://www.progressivereform.org/CPRBlog.cfm?idBlog=2480725C-9CC8-717D-E8DE6C4C4A5FF6EB>.

<sup>16</sup> Aldy, *supra* note 1, at 39–40; Coglianese, *supra* note 14, at 66A.

<sup>17</sup> Aldy, *supra* note 1, at 40.



68 and how the data necessary for this measurement will be collected) should be considered an  
69 integral part of the development process for appropriate rules. This culture of evaluation and  
70 improvement is already part of many government programs, but not yet of most regulatory  
71 programs.

72 This recommendation aims to help agencies create such a culture of retrospective  
73 review. To promote robust retrospective analysis, agency officials must see it as critical to  
74 advancing their missions. To obtain this “buy-in,” these officials must have a framework for  
75 performing the required analysis and possess adequate resources for conducting the necessary  
76 reviews (such that doing so is wholly integrated into agencies’ other responsibilities rather than  
77 serving to displace those existing responsibilities). Given the costs of performing robust  
78 retrospective analysis, it is critical that agencies have adequate resources such that conducting  
79 retrospective review does not detract from other aspects of their regulatory missions. Thus,  
80 the recommendation sets forth considerations relevant both to identifying regulations that are  
81 strong candidates for review and for conducting retrospective analysis.<sup>18</sup> In addition, the  
82 recommendation encourages agencies to integrate retrospective analysis into their  
83 policymaking framework more generally, urging them not only to reevaluate existing  
84 regulations but also to design new regulations with an eye towards later reexamination and to  
85 consider the cumulative regulatory burden. In doing so, agencies should identify data  
86 collection needs and consider other regulatory drafting strategies that can help them later  
87 determine whether the regulation achieved its purpose.<sup>19</sup> Finally, the recommendation

<sup>18</sup> In 2011, the Conference recommended that Agencies also should periodically review regulations that have incorporated by reference material published elsewhere in order to ensure that they are updated as appropriate and contain complete and accurate access information. Administrative Conference of the United States, Recommendation 2011-5, *Incorporation by Reference*, 77 Fed. Reg. 2257, 2259 (Jan. 17, 2012).

<sup>19</sup> ~~Agencies should, where appropriate and legally permissible, consider~~ Some scholars propose the use of experimental methods and data-driven evaluation techniques in order to identify the actual impacts caused by regulations and determine whether they are achieving their intended outcomes. John DiNardo & David S. Lee, *Program Evaluation & Research Designs*, in 4A HANDBOOK OF LABOR ECONOMICS 463–536 (2011); *see also generally* JOSEPH S. WHOLEY, HARRY P. HATRY, & KATHRYN E. NEWCOMER, HANDBOOK OF PRACTICAL PROGRAM EVALUATION (3d ed. 2010). This might include, among other things, taking the opportunity of pilot projects and regulatory phase-ins to test different regulatory approaches. ~~Agencies also should, where appropriate and legally permissible, consider~~ Some scholars also propose



88 identifies opportunities for conserving agency resources by taking advantage of internal and  
89 external sources of information and expertise. In many instances, stakeholders may be able to  
90 furnish information to which agency officials otherwise lack access.<sup>20</sup> In other cases, overseas  
91 regulators may have confronted similar regulatory problems, and incorporating these  
92 approaches would have the double benefit of avoiding duplication of effort and providing  
93 opportunities for eliminating unnecessary regulatory divergences.<sup>21</sup> Further, the information  
94 generated from retrospective review has the potential to conserve resources during future  
95 regulatory development of similar rules by informing ex ante regulatory analysis, which in turn  
96 improves the quality of new regulations.<sup>22</sup>

97 Though the recommendation identifies certain common principles and opportunities for  
98 promoting robust retrospective analysis, it accepts the fact that each agency must tailor its  
99 regulatory lookback procedures to its statutory mandates, the nature of its regulatory mission,  
100 its competing priorities, and its current budgetary resources. In short, retrospective review is  
101 not a “one-size-fits-all” enterprise. In addition, as optimal regulatory approaches may evolve  
102 over time, so too may retrospective review procedures. Therefore, the recommendation avoids  
103 an overly rigid framework. Rather, it identifies considerations and best practices that, over  
104 time, should help foster a regulatory approach that integrates retrospective analysis as a critical

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the use of alternative regulatory mechanisms and other innovative approaches designed to lessen regulatory burdens while ensuring appropriate levels of regulatory protection. [\[Siciliano Amendment\]](#)

<sup>20</sup> Aldy, *supra* note 1, at 22–23, 54, 56–57; see generally Bull, *supra* note 14 (proposing a system whereby private entities would use petitions for rulemaking to urge agencies to adopt less burdensome alternatives to existing regulations while preserving existing levels of regulatory protection). Agencies should nevertheless recognize that private and non-governmental entities’ interests may not align with public interests and that established firms may actually defend regulations that create barriers to entry for newer, smaller competitors. SUSAN E. DUDLEY & JERRY BRITO, REGULATION: A PRIMER 18–19 (2d ed. 2012) (describing the so-called “bootleggers and Baptists” phenomenon, whereby businesses that benefit from market interventions may make common cause with civil society groups that advocate such policies for ~~supposedly more altruistic purposes~~ other reasons). [\[Siciliano Amendment\]](#)

<sup>21</sup> Exec. Order No. 13,609, § 1, 77 Fed. Reg. 26,413, 26,413 (May 4, 2012); Administrative Conference of the United States, Recommendation 2011-6, *International Regulatory Cooperation*, ¶ 4, 77 Fed. Reg. 2259, 2260 (Jan. 17, 2012).

<sup>22</sup> PETER H. SCHUCK, WHY GOVERNMENT FAILS SO OFTEN AND HOW IT CAN DO BETTER 57 (2014).



105 element of agency decisionmaking and that accounts for the uncertainty inherent in regulatory  
106 policymaking at all stages of the process. The overall goal is to move away from a model of  
107 retrospective analysis as an episodic, top-down reporting and compliance obligation to one  
108 where agencies internalize a culture of retrospective review as part of their general regulatory  
109 mission.

### RECOMMENDATION

#### 110 Value of Retrospective Review

111 1. The Conference endorses the objectives of Executive Orders 13,563, 13,579, and  
112 13,610 with respect to retrospective review of existing regulations. ~~Agencies should work with  
113 the Office of Management and Budget (OMB), as appropriate, to develop retrospective review  
114 into a robust feature of the regulatory system.~~

**Comment [CMA2]:** Eisner Amendment (see new recommendation 13 for replacement language for the sentence removed here)

#### 115 Integrating Retrospective Review into New Regulations

116 2. When formulating new regulations, agencies should, as appropriate, given available  
117 resources, priorities, **authorizing statutes**, and the nature of the regulation, establish a  
118 framework for reassessing the regulation at a later date **and should consider including portions  
119 of the framework in the rule's preamble**. The rigor of analysis should be tailored to the rule  
120 **being reviewed**. The framework should include the following ~~(portions of which the agency  
121 should include in the rule's preamble, where appropriate), as appropriate:~~

122 (a) Agencies should describe the methodology by which they intend to evaluate the  
123 efficacy of and the impacts caused by the regulation, ~~using~~**including** data-driven  
124 experimental or quasi-experimental designs where appropriate, **taking into account the  
125 burdens to the public in supplying relevant data to agencies.**

**Comment [CMA3]:** Siciliano Amendment

126 (b) Agencies should include a clear statement of the rule's intended regulatory  
127 results with some objectively measurable outcome(s) and a plan for gathering the data  
128 needed to measure the desired outcome(s). To the extent feasible, objectives should be



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129 outcome-based rather than output-based. Objectives may include measures of both  
130 benefits and costs (or cost-effectiveness), as appropriate.

131 (c) Agencies should identify key assumptions underlying any regulatory impact  
132 analysis being performed on the regulation. This should include a description of the  
133 level of uncertainty associated with projected regulatory costs and benefits, consistent  
134 with OMB Circular A-4.

135 (d) Agencies should establish a target time frame within which they plan to reassess  
136 the proposed regulation.

137 (e) Agencies should include a discussion of how the public and other governmental  
138 agencies (federal, state, tribal, and local) will be involved in the review.

139 Agencies that have systematic review plans available on the internet that set forth the process  
140 and a schedule for their review of existing rules may address the recommendations in  
141 subparagraphs (a)–(e), as appropriate, by reference to their plans.

**Comment [CMA4]:** Eisner Amendment

142 3. When reviewing new regulations, the Office of Information and Regulatory Affairs  
143 (OIRA) should facilitate planning for subsequent retrospective review to the extent appropriate.  
144 Agencies should consider including a section in the preamble of their proposed and final rules  
145 that accounts separately for paperwork burdens associated with the collection of data to  
146 facilitate retrospective review and should note that data gaps can impede subsequent  
147 retrospective review.

**Comment [CMA5]:** Eisner Comment:  
I agree that it is important for OMB to help agencies gather the necessary information to evaluate the effectiveness of an existing rule, but it is not clear whether this recommendation is suggesting by “accounts separately” that the paperwork burdens would not be a cost of the rule. If the burden is a result of what will be a required submission or recordkeeping requirement, the agency will have to impose that burden in the subject rule or issue another rule to require that. The latter option would be an inefficient approach. This recommendation should be clarified, and if OMB agrees that it is not a burden imposed by the rule, I recommend that a statement to that effect be added to the preamble of this ACUS recommendation.

148 4. Where it is legally permissible and appropriate, agencies should consider designing  
149 their regulations in ways that allow alternative approaches in the rule that could help the  
150 agency in a subsequent review of the rule to determine whether there are more effective  
151 approaches to implementing its regulatory objective. For example, agencies could allow for  
152 experimentation, innovation, competition, and experiential learning (calling upon the insights  
153 of internal statistical offices, as well as policy and program evaluation offices, in order to design  
154 plans for reassessing regulations, to the extent they have such resources). As recommended by





155 OMB Circular A-4, agencies should consider allowing states and localities greater flexibility to  
156 tailor regulatory programs to their specific needs and circumstances and, in so doing, to serve  
157 as ~~models for alternative regulatory approaches a natural experiment to be evaluated by~~  
158 ~~subsequent retrospective review.~~ ~~Many of the s~~Statutes that authorize federal regulations are  
159 ~~based on~~ shared responsibility among different levels of government ~~and are thus~~ may be  
160 amenable to such flexibility.

Comment [CMA6]: Siciliano Amendment

161 **Prioritizing Regulations for Retrospective Analysis**

162 | 5. In light of resource constraints ~~and competing priorities~~, agencies should adopt and  
163 publicize a framework for prioritizing rules for retrospective analysis. Agency frameworks  
164 should be transparent and enable the public to understand why the agency prioritized certain  
165 rules for review in light of the articulated selection criteria. Though considerations will vary  
166 from agency to agency and program to program, the following factors can help identify strong  
167 candidates for retrospective review that could inform regulatory revision:

- 168 (a) Likelihood of improving attainment of statutory objective;
- 169 (b) Likelihood of increasing net benefits and magnitude of those potential benefits;
- 170 (c) Uncertainty about the accuracy of initial estimates of regulatory costs and  
171 benefits;
- 172 (d) Changes in the statutory framework under which the regulation was issued;
- 173 (e) ~~Internal agency administrative burden associated with the regulation~~Cumulative  
174 ~~regulatory burden created by the regulation at issue and related regulations (including~~  
175 ~~those issued by other agencies)~~;
- 176 (f) Changes in underlying market or economic conditions, technological advances,  
177 evolving social norms, and/or changes in public risk tolerance;



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178 (g) ~~Cumulative regulatory burden created by the regulation at issue and related~~  
179 ~~regulations (including those issued by other agencies). Internal agency administrative~~  
180 ~~burden associated with the regulation;~~

181 (h) Comments, petitions, complaints, or suggestions received from stakeholder  
182 groups and members of the public;

183 (i) Differences between U.S. regulatory approaches and those of key international  
184 trading partners;~~and~~

185 (j) Complexity of the rule (as demonstrated by poor compliance rates, amount of  
186 guidance issued, remands from the courts, or other factors); ~~and~~

187 ~~(j)(k) Disparate treatment of similarly situated persons or entities (including both~~  
188 ~~regulated parties and regulatory beneficiaries).~~

Comment [CMA7]: Williams Amendment

189 To the extent applicable, agencies should consider both the initial estimates of regulatory costs  
190 and benefits, and any additional evidence suggesting that those estimates are no longer  
191 accurate.

192 6. Though agencies will likely focus their retrospective analysis resources primarily on  
193 important regulations as identified by the foregoing factors, they should also take advantage of  
194 simple opportunities to improve regulations when the changes are relatively minor (e.g.,  
195 allowing electronic filing of forms in lieu of traditional paper filing).

196 **Performing Retrospective Analysis**

197 7. When conducting retrospective analysis of existing regulations, agencies should  
198 consider whether the regulations are accomplishing their intended purpose or whether they  
199 might, to the extent permitted by law, be modified, strengthened, or eliminated in order to  
200 achieve statutory goals more faithfully, minimize compliance burdens on regulated entities, or  
201 more effectively confer regulatory benefits. The level of rigor of retrospective analysis will  
202 depend on a variety of factors ~~and should be tailored to the circumstances~~. As appropriate ~~and~~



203 | ~~to the extent resources allow,~~ agencies should employ statistical tools to identify the impacts  
204 | caused by regulations, including their efficacy, benefits, and costs and should also consider the  
205 | various factors articulated in recommendation 5 in determining how regulations might be  
206 | modified to achieve their intended ~~results-purpose~~ more effectively.

Comment [CMA8]: Siciliano Amendment

207 | 8. Agencies should consider assigning the primary responsibility for conducting  
208 | retrospective review to a set of officials other than those responsible for producing or enforcing  
209 | the regulation, ~~and ensure that these officials are adequately resourced to conduct effective~~  
210 | ~~reviews if adequate resources are available.~~ Reviewing officials should coordinate and  
211 | collaborate with rule producers and enforcers.

Comment [CMA9]: Eisner Amendment

212 | 9. ~~Agencies should periodically evaluate the results of their retrospective reviews and~~  
213 | ~~determine whether they are identifying common problems with the effectiveness of their rule~~  
214 | ~~development and drafting practices that should be addressed.~~

Comment [CMA10]: Eisner Amendment

## 215 | Inter-Agency Coordination

216 | ~~8-10.~~ Agencies should coordinate ~~their retrospective reviews~~ with ~~sister~~other agencies  
217 | that have issued related regulations in order to promote a coherent regulatory scheme that  
218 | maximizes net benefits. Agencies and OMB should also consider creating a high-level  
219 | organization responsible for promoting coordination between agencies in their retrospective  
220 | review efforts (or assigning this function to an existing entity, such as the Regulatory Working  
221 | Group).

222 | ~~9-11.~~ ~~In conducting retrospective review,~~ Agencies should consider regulations  
223 | adopted by key trading partners and examine the possibility of either harmonizing regulatory  
224 | approaches or recognizing foreign regulations as equivalent to their U.S. counterparts when  
225 | doing so would advance the agency mission or remove an unnecessary regulatory difference  
226 | without undermining that mission.

227 | 12. OIRA should consider formulating a guidance document that highlights any  
228 | considerations common to ~~all~~ agency retrospective analyses ~~generally.~~



229 | ~~10-13.~~ Agencies that establish systematic reviews of their existing rules should  
230 | coordinate the process and substance of those reviews with OMB and other affected agencies.  
231 | The Executive Office of the President and OMB should not impose ad hoc, top-down review  
232 | programs on agencies that establish systematic review programs.

Comment [CMA11]: Eisner Amendment

233 | **Promoting Outside Input**

234 | ~~11-14.~~ Regulated parties, non-governmental organizations, academics, and other  
235 | outside entities or individuals ~~often may~~ possess valuable information concerning both the  
236 | impact of individual regulations and the cumulative impact of a body of regulations issued by  
237 | multiple agencies to which individual agencies might not otherwise have access. Agencies  
238 | should leverage ~~this~~ outside expertise both in reassessing existing regulations and devising  
239 | retrospective review plans for new regulations. ~~In so doing, agencies should be mindful of the~~  
240 | ~~potential applicability of the Paperwork Reduction Act, and agencies and OMB should utilize~~  
241 | ~~flexibilities within the Act and OMB's implementing regulations (e.g., a streamlined comment~~  
242 | ~~period for collections associated with proposed rules) where permissible and appropriate.~~  
243 | Agencies should also consider using social media, as appropriate, to learn about actual  
244 | experience under the relevant regulation(s).

Comment [CMA12]: Siciliano Amendment

Comment [CMA13]: Herz Amendment

Comment [CMA14]: Herz Amendment

245 | ~~12-15.~~ Agencies should disclose relevant data concerning their retrospective analyses of  
246 | existing regulations on "regulations.gov," their Open Government webpages, and/or other  
247 | publicly available websites. In so doing, to the extent appropriate, agencies should organize the  
248 | data in ways that allow private parties to recreate the agency's work and to run additional  
249 | analyses concerning existing rules' effectiveness. Agencies should encourage private parties to  
250 | submit information and analyses and should integrate relevant information into their  
251 | retrospective reviews.

252 | **Ensuring Adequate Resources**

253 | ~~13-16.~~ Agencies and OMB should consider agencies' retrospective review needs and  
254 | activities when developing and evaluating agency budget requests. To the extent that agencies



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255 require additional resources to conduct appropriately searching retrospective reviews,  
256 Congress should fund agencies as necessary.