

May 21, 2013

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United States Department of Agriculture
Before the House Committee on Small Business
May 8, 2013**

**Questions for the Record
Will be submitted to OCR**

REGULATORY LOOKBACK

Mr. Schrader: Please explain how the Department has conducted a look back and inventory of existing programs and determined what is still relevant and effective at delivering your program dollars?

Response: In order to implement Executive Orders 13563, “Improving Regulation and Regulatory Review” and 13610, “Identifying and Reducing Regulatory Burdens” Deputy Secretary Kathleen Merrigan directed a retrospective review team comprised of mission area and agency-level regulatory review coordinators and work groups. The team initiated a review of USDA regulations that focused on increasing the public’s access to critical USDA programs, particularly those programs where access could be simplified and the reporting burdens reduced.

The review encompassed the activities of the largest regulatory and service delivery organizations in the Department: Rural Development, Risk Management Agency, Farm Service Agency Natural Resources Conservation Service, the Food Safety and Inspection Service, the Forest Service, and the Animal and Plant Health Inspection Service. These agencies offered the best opportunities to achieve President Obama’s goals for promoting regulatory innovation and reducing reporting burdens, while simultaneously reducing administrative and operating costs.

In order to identify candidates for analysis, USDA considered several factors in setting priorities. A number of these factors are outlined under Section 610 of the Regulatory Flexibility Act including: the continued need for the regulation; the nature of comments or petitions received concerning the regulation from the public; the complexity of the regulation; the extent to which the regulation overlaps, duplicates, or conflicts with other Federal regulations, and, to the extent applicable, with State and local government regulations; and the length of time since the regulation has been evaluated, and the degree to which technology, economic conditions, or other factors may have changed in the areas affected by the regulation. For the purposes of implementing EO 13563, USDA also considered the urgency for improving customer service by simplifying, streamlining, or improving quality for information collection procedures; comments from stakeholders; resource capacity and potential approval process timelines; and need for statutory change.

REGULATORY FLEXIBILITY ACT

Mr. Tipton: How has your implementation of the Regulatory Flexibility Act impacted small businesses? How do you calculate burdens? How many regulations have been pulled back?

Response: The Regulatory Flexibility Act (RFA) requires agencies to consider the economic impact of each rule on small entities and where the regulatory impact is likely to be significant, affecting a substantial number of these small entities, agencies must seek less burdensome alternatives. USDA reports the findings of its RFA analysis at each stage of rulemaking published in the Federal Register.

The RFA also requires USDA to identify regulations that are expected to “significantly” impact small businesses in the publication of its semi-annual regulatory agenda. Also, under Section 610 of the RFA, USDA must periodically review regulations that are potentially “duplicative, excessively burdensome, or no longer necessary,” and publish these reviews in its regulatory agenda.

Burden is represented as the hours spent by the public responding to Federal information collections. When USDA estimates and seeks to reduce the burden it imposes on the public, it considers the time that an individual or entity spends reading and understanding a request for information, as well as the time spent developing, compiling, recording, reviewing, and providing the information. Consequently, the burden includes more than just the time necessary to complete and submit an application.

The focus of USDA’s review has been to simplify and reduce the reporting burden on the public for entry and access to USDA programs, while simultaneously reducing administrative and operating costs. To achieve this, USDA has modified burden collections, rather than rescinding regulations.

SCHOOL MEALS

Mr. Huelskamp: Why has USDA decided to limit access to meat and dairy through its new school meal nutrition standards?

Response: As directed by Congress under the HHFKA, USDA relied on the recommendations of experts like the Institute of Medicine—a gold standard for scientific analysis—as the basis for our standards. The changes are based on extensive review of current nutrition science, and align with the 2010 Dietary Guidelines for Americans. The result was updated, science-based standards, in which the portions of school meals are “right-sized” to reflect the age and dietary needs of the students served.

The updated school meal pattern is intended to offer an appropriate balance between all food groups. There has never been any maximum limit on fluid milk. The weekly maximums included in the final rule for grains and meats/meat alternates were intended to help menu planners meet the weekly dietary specifications, including calories, since foods from these two components are typically more calorie-dense than fruits, vegetables, and milk.

When feedback was sought from State agencies and schools on implementation of the new requirements, however, some reported significant operational challenges in meeting the maximum limits for grains and meats/meat alternates. In response, in December 2012, USDA issued a memorandum allowing schools to meet only the weekly minimums for these components and still be certified as meeting the meal pattern. On February 25, 2013, USDA extended this flexibility to SY 2013-14, and we are working to make this flexibility permanent.

Therefore, there is ample flexibility for schools to provide meals that contain all required food components, including meat and dairy, in the portion sizes and meals that are most appropriate for students and remain within the weekly limits for calories, saturated fat and (eventually) sodium.

Mr. Huelskamp: Under your new regulations, why do elementary children have the same caloric limits as high school students?

Response: While it is important to ensure that school meals offer sensible portion sizes, we certainly understand that older students need more calories than younger students. That is precisely why the new school meal requirements include daily minimum portion and nutrition standards for three different age groups; K-5, 6-8 and 9-12. Under the new school meal nutrition standards, meals offered to students in grades K-5 can contain, on average over the course of the week, up to 650 calories at lunch and 500 calories at breakfast. In contrast, the average meal offered to students in grades 9-12 can contain up to 850 calories at lunch and 600 calories at breakfast.

The calorie limits are based on the weekly *averages* of all meals offered, and do not apply on a per-meal or per-student basis. Setting the standard as an average range over the course of a week provides the menu planner with significant flexibility to offer a variety of meals, some of which may actually fall outside of the range, but when averaged with other offerings, meet the standard. Since the limit is weighted, some students may ultimately select meals on any given day that contain more or less than the weekly calorie limits.

CERTAINTY

Mr. Tipton: Please explain where you are in the process of regulations affecting the Sage Grouse and Lesser Prairie Chicken. How have you created flexibilities for small businesses?

Response: The Department of Agriculture (USDA) has no role in regulations affecting the Greater Sage Grouse and Lesser Prairie Chicken. However, USDA is actively providing assistance to farmers and ranchers who are making substantial voluntary efforts to conserve habitat for these species, which are candidates for listing under the Endangered Species Act.

Through the Sage Grouse Initiative (SGI) and the Lesser Prairie Chicken Initiative (LPCI) the USDA Natural Resources Conservation Service (NRCS) is supporting an approach for sustainable ranching and candidate species conservation. In the case of each of these species, NRCS has worked closely with the US Fish and Wildlife Service (FWS) to provide regulatory predictability that, based on the conservation plans a farmer or rancher develops cooperatively with NRCS, their covered operations will be consistent with any regulatory requirements for each of those species. These conservation plans are designed to benefit the species and productive agricultural operations. Since they were initially established, these predictability agreements have been expanded so that they can continue beyond the life of a particular NRCS contract and may be as long as 30 years.

Both SGI and LPCI have been popular with producers and have been a focus for partner engagement. USDA launched SGI on heels of FWS 'candidate' designation under the Endangered Species Act. In the short time since this Initiative began, 700 ranchers across 11 states have enrolled and are managing 2.5 million acres for the benefit of sage grouse. NRCS invested \$145 million in Farm Bill Resources – while partners stepped up with \$70 million in matching investments. As just one example of the benefit of SGI supported voluntary conservation, participating ranchers have prevented 2,600 fence collisions annually, and our marking or moving of 500 miles of 'high-risk' fence has reduced fence strike risk by 83 percent. This is the equivalent to saving twice the entire male sage grouse population in North Dakota, South Dakota, Washington and Canada. Through LPCI, NRCS has been collaborating closely with the 5 States with Lesser Prairie Chicken habitat as they develop a range-wide plan for the species. For the Lesser Prairie Chicken, voluntary conservation is key to the survival of the species, because over 90 percent of the range is on private lands. Since it was announced in 2010, a tremendous amount of progress has been accomplished through LPCI with almost \$24 million dollars being invested to benefit some 750,000 acres of habitat in important LPC range.