

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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FEDERAL RULEMAKING

Regulatory Review Processes Could Be Enhanced

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.