Regulatory Practices at USDA

Workshop on Good Reg Practices
Lima, Peru (Oct 29-20, 2014)

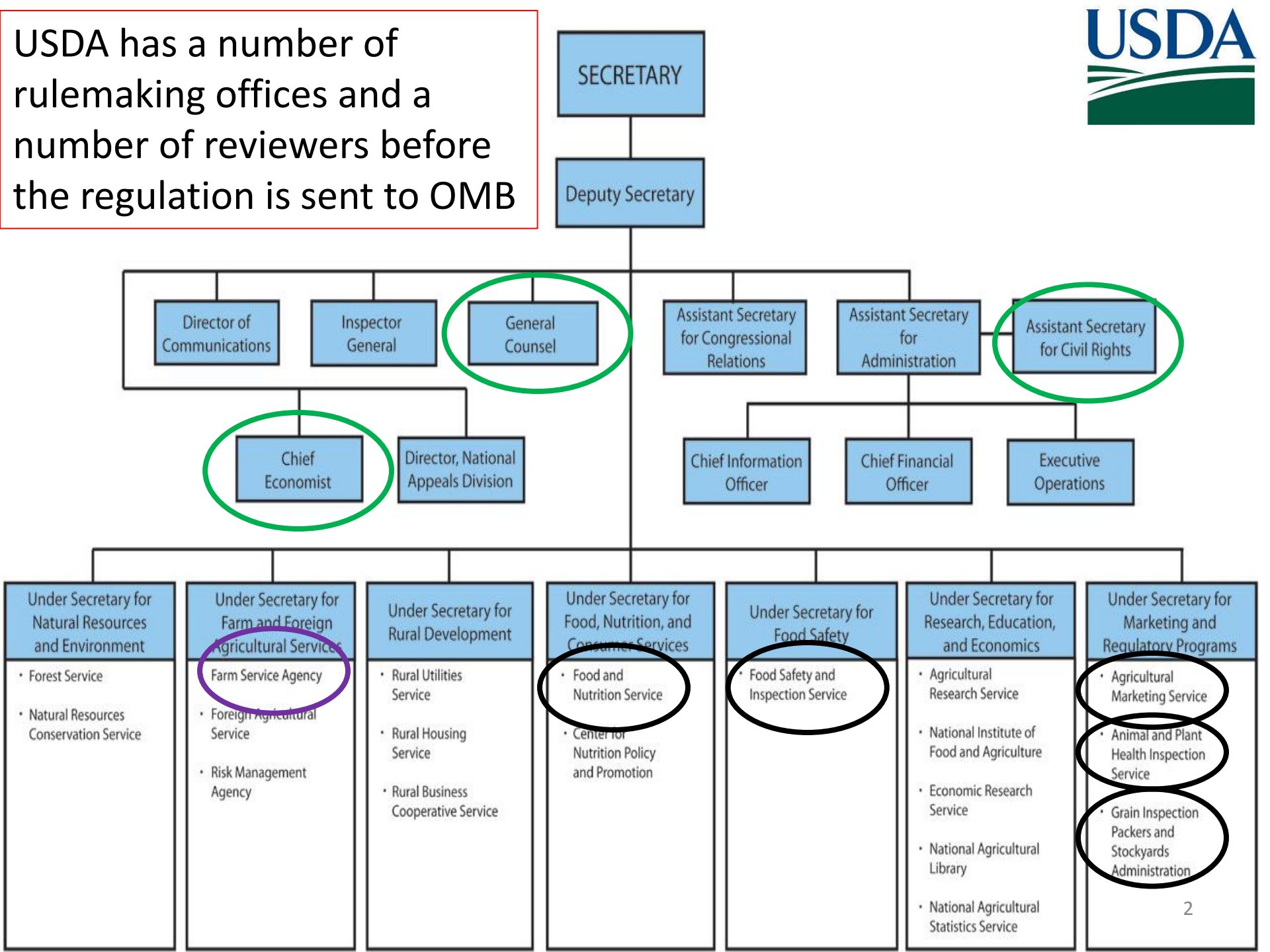
Robert Johansson

Office of the Chief Economist

USDA

United States Department of Agriculture

USDA has a number of rulemaking offices and a number of reviewers before the regulation is sent to OMB



Significant Rules Reviewed by OMB

Fiscal year	AgSEC	AMS	APHIS	FAS	FCIC	FNS	FS	FSA	FSIS	GIPSA	NRCS	RBS	RHS	RUS
1994		10	3	2		13	2	19	14	5	1		6	1
1995	2	3	6	7	1	12	6	17	9	2	1	1	5	2
1996	1	1	5	4	7	8	2	13	7	5	2	1	2	4
1997		1	10	4	3	6	1	14	9	2	3	2	3	7
1998	3		14	1	7	5	2	8	3	1	2	1	3	1
1999		2	21		7	10	3	20	3	1	1	2	2	1
2000	1		15	1	3	8	3	13	4	3			1	
2001		2	15	3	2	5	1	17	2	2	3			1
2002	1	1	18	2	1	3	4	14	1	1	1		1	
2003			17	5	2	10	6	8	1	2	4	1	2	2
2004	2	1	21	1	2	2	3	3	1	1	2	4	1	2
2005		1	5	1	1	8	7	4	3		1	2	1	1
2006		3	16		2	13	4	1	2		2		1	
2007		3	8		1	5	4	8				4		2
2008	5	2	12			7	3	1	2			1	1	
2009	3	1	10	1		5	1	6	5	1	5	7		
2010	4	1	6	1	1	5	1	9	2	2	3	2		
2011	1	1	9		2	8	4	4	12			2		
2012	1	1	12	1		3	2	1	5	2		1		
2013	1		1		1		2	1	1				3	
2014						2	1		1		1		1	

Source: USDA-OCE.

7 CFR § 2.29 - Chief Economist.

The following delegations of authority are made by the Secretary of Agriculture to the Chief Economist:

- Review and assess the economic impact of all significant regulations proposed by any agency of the Department.

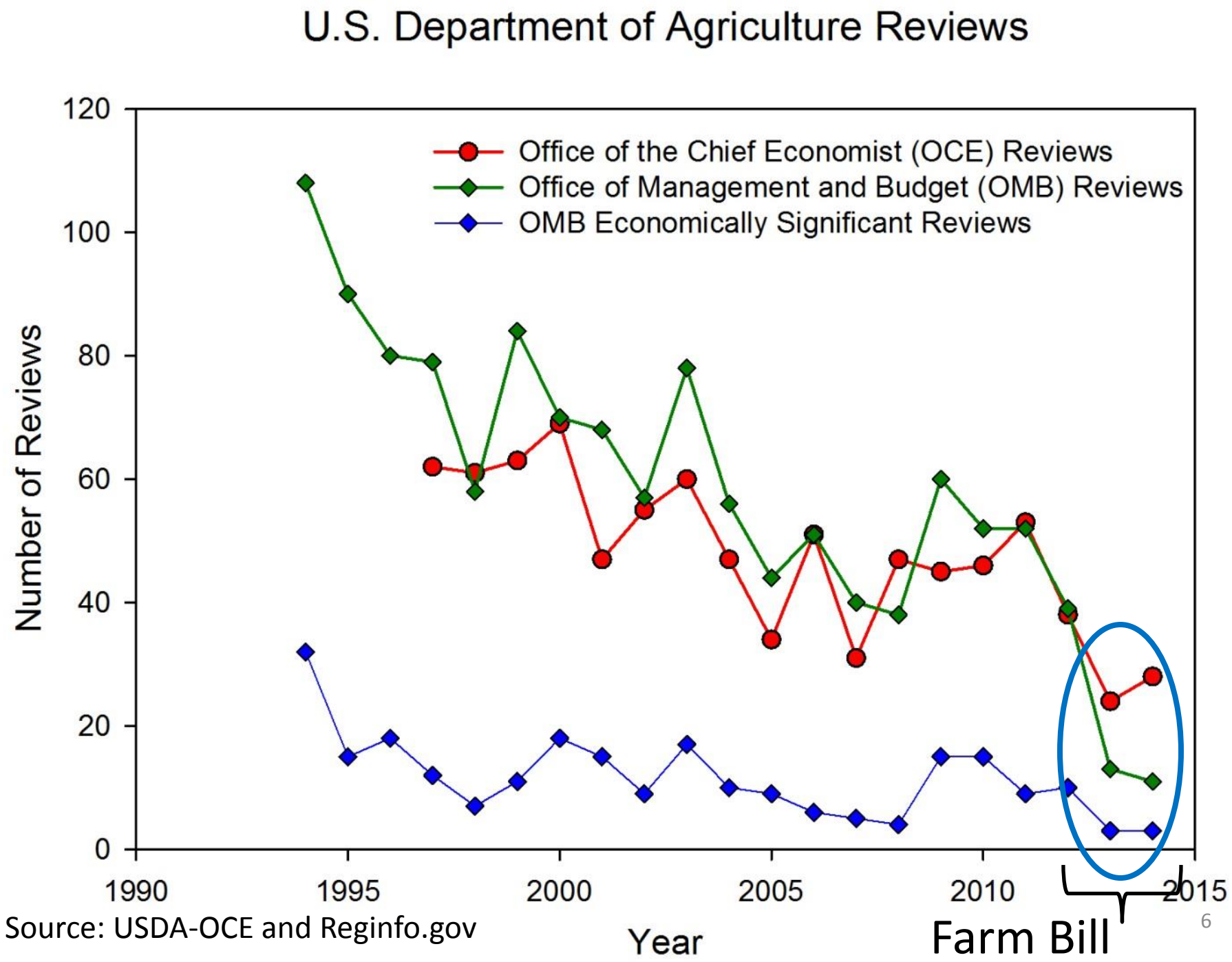
- Provide direction to Department agencies in the appropriate methods of risk assessment and cost-benefit analyses and coordinate and review all risk assessments and cost-benefit analyses prepared by any agency of the Department.

7 CFR § 2204e - Office of Risk Assessment and Cost-Benefit Analysis

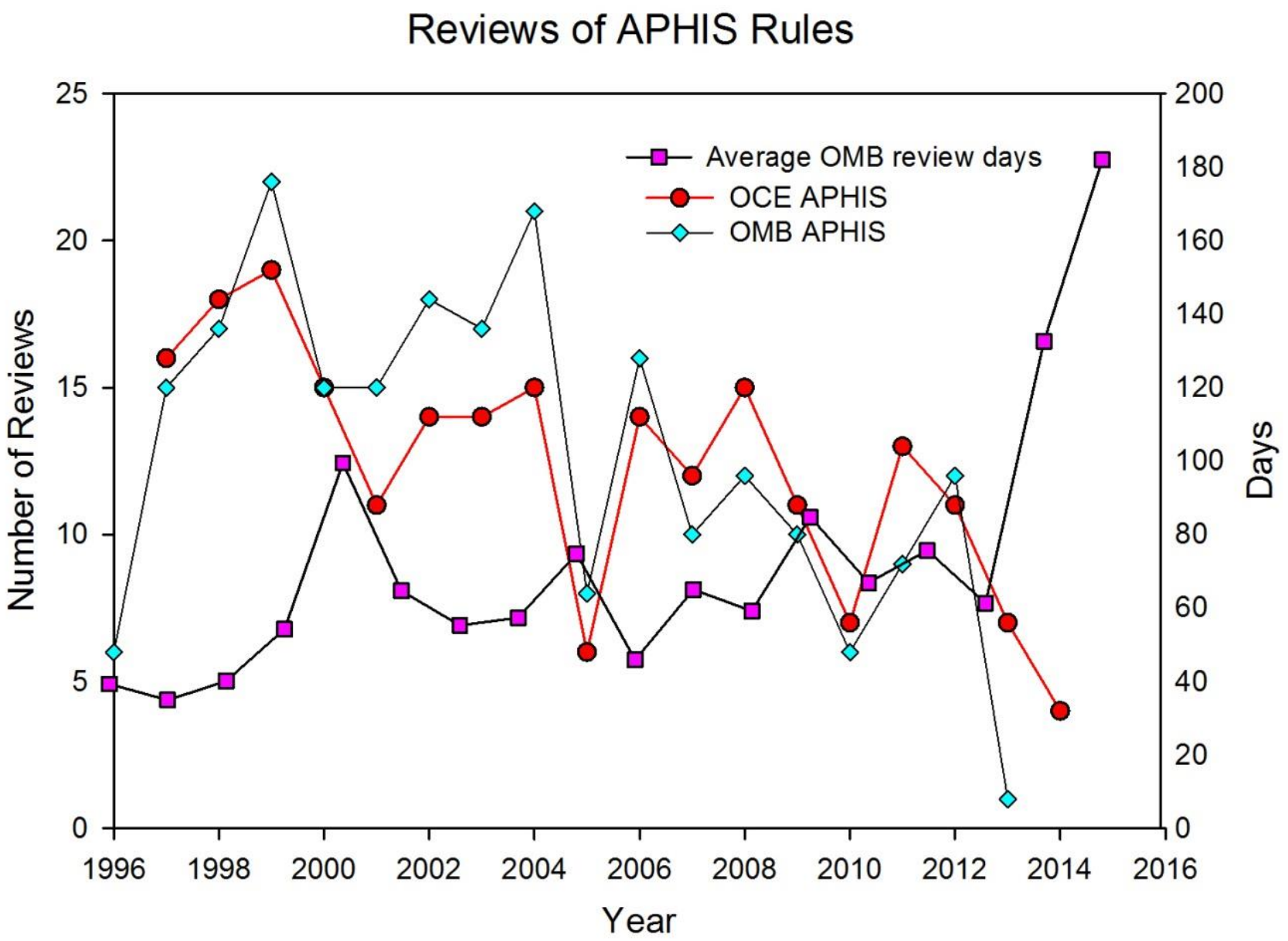
"…The Director shall ensure that any regulatory analysis that is conducted under this section includes a risk assessment and cost-benefit analysis that is performed consistently and uses reasonably obtainable and sound scientific, technical, economic, and other data…."

"…for each proposed major regulation…"

"…As used in this section, the term "major regulation" means any regulation that the Secretary of Agriculture estimates is likely to have an annual impact on the economy of the United States of $100,000,000 in 1994 dollars. ic, and other data…"



Source: USDA-OCE and Reginfo.gov



Source: USDA-OCE and Reginfo.gov

Regulatory Process at USDA

- Agency prepares proposed rule
  - PRIA or cost benefit analysis --- costs and benefits
  - RA --- if human health impacts
  - NEPA --- environmental impacts
  - CRIA --- civil rights impacts
  - Small Business requirements --- small business impacts
- Submit to USDA agencies to Review
  - OCE/ORACBA review of RIA and RA
- Send to OMB for interagency review
- Respond to review comments & publish
- Solicit public comments

USDA

Regulatory Process at USDA (cont.)

- Prepare Final
  - Respond to public comments
  - Select final option
- Agency prepares final rule
  - RIA
  - RA
  - CRIA
  - Small Business
- Submit to USDA agencies to Review
  - OCE/ORACBA review of RIA and RA
- Send to OMB for interagency review
- Respond to comments

A-4 Framework

- Benefit Cost Analysis
  - Max E[Benefits] – E[Costs}
  - Condition: MB = MC

- Cost Effective Analysis
  - Max E[Benefits] s.t. fixed budget
  - or Min E[Costs] s.t. fixed objective
    - Standards of performance
    - Other social purpose, protection of privacy, etc

http://www.whitehouse.gov/omb/circulars_a004_a-4

Market Failure

Title 9 of CFR: Animals and Animal Products;

PART 86—ANIMAL DISEASE TRACEABILITY

Contents

§86.2 General requirements for traceability

(b) No person may move covered livestock interstate or receive such livestock moved interstate unless the livestock meet all applicable requirements of this part

USDA

Transfer Rules

Statutory Requirements (e.g., 2014 Farm Bill)

e.g., Margin Protection Program for Dairy Producers,

"…Not later than September 1, 2014, the Secretary shall establish and administer a margin protection program for dairy producers under which participating dairy operations are paid a margin protection payment when actual dairy production margins are less than the threshold levels for a margin protection payment…"

(7 U.S. Code § 9053 - Establishment of margin protection program for dairy producers)

USDA

What Does Circular A-4 Say about those types of rules?

1. Market Failure
   - Baseline
   - Alternative approaches
     - Expected costs
     - Expected benefits
   - Select option with greatest net benefits
   - Solicit public comment

2. Transfer Rules
   - Baseline
   - Alternatives to meet statutory intent
   - Detail expected transfers

http://www.whitehouse.gov/omb/circulars_a004_a-4

Additional guidance from EO12866

"…Each agency shall tailor its regulations to *impose the least burden on society*, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations…"

http://www.whitehouse.gov/omb/inforeg_regmatters#eo12866

OMB Report to Congress (2013)

Transfer rules may

- impose real costs on society to the extent that they cause people to change behavior, either by directly prohibiting or mandating certain activities, or, more often, by altering prices and costs.
- The costs resulting from these behavior changes are referred to as the "deadweight losses" associated with the transfer.
- The Regulatory Right-to-Know Act requires OMB to report the social costs and benefits of these rules, and OMB ***encourages agencies to report these costs and benefits for transfer rules***;

http://www.whitehouse.gov/omb/inforeg_regpol_reports_congress

Case Study 1: Traceability for Livestock Moving Interstate

- Need for Rule: The United States did not have an overarching animal disease traceability program integrated to meet the needs of all farm-raised livestock and poultry as well as disease programs
- Animal traceability does not prevent disease but provides invaluable information for emergency response and for ongoing disease control programs
- Markets usually fail in the provision of this type of integrated information

USDA

US Beef Industry

	Averaged annual U.S. retail Choice beef price*	Retail equivalent value of U.S. beef industry	Total U.S. beef consump-tion	Value of U.S. cattle and calf production	U.S. beef production (commer-cial carcass weight)	U.S. beef exports (commer-cial carcass weight)	U.S. beef exports (value)	U.S. beef exports as percent of production
	$/lb	$ billion	Billion lb	$ billion	Billion lb	Billion lb	$ billion	Percent
2002	3.32	60	27.9	27.1	27.09	2.447	2.629	9.0
2003	3.75	63	27	32.1	26.24	2.518	3.186	9.6
2004	4.07	70	27.8	34.8	24.55	0.46	0.631	1.9
2005	4.09	71	27.8	36.6	24.68	0.697	1.031	2.8
2006	3.97	71	28.1	35.6	26.15	1.145	1.617	4.4
2007	4.16	74	28.1	36	26.42	1.434	2.187	5.4
2008	4.33	76	27.3	35.6	26.56	1.996	3.014	7.5
2009	4.26	73	26.8	32	26.07	1.935	2.909	7.4
2010	4.4	74	26.4	37	26.41	2.3	3.839	8.7
2011	4.81	79	25.5	45.2	26.28	2.785	5.041	10.6
2012	4.99	85	25.8	48.2	26	2.453	5.114	9.4
2013	5.29	88	25.5	49.5	25.8	2.584	5.711	10

Source: USDA-ERS.

Need for Rule (cont.)

- The most significant inadequacies in disease tracing capabilities existed in the cattle industry
- Previously, many cattle received official identification through USDA's vaccination program for brucellosis
- Successful eradication efforts however resulted in a large decline in the number of officially identified cattle (10 million in 1988 vs. 3.1 million in 2010)

USDA

Principles of the New Framework

- Traceability rulemaking moved forward as collaborative effort (including numerous public meetings, Tribal consultations, and conference calls with industry)
- Principles of the regulatory framework adopted included: flexibility, coordination with stakeholders, producer data controlled by States and Tribes, requirements applied to farm-raised livestock (cattle and bison, horses and other equine species, sheep and goats, swine, captive cervids) and poultry
- Progress envisioned over time and driven by industry

The NAIS Study

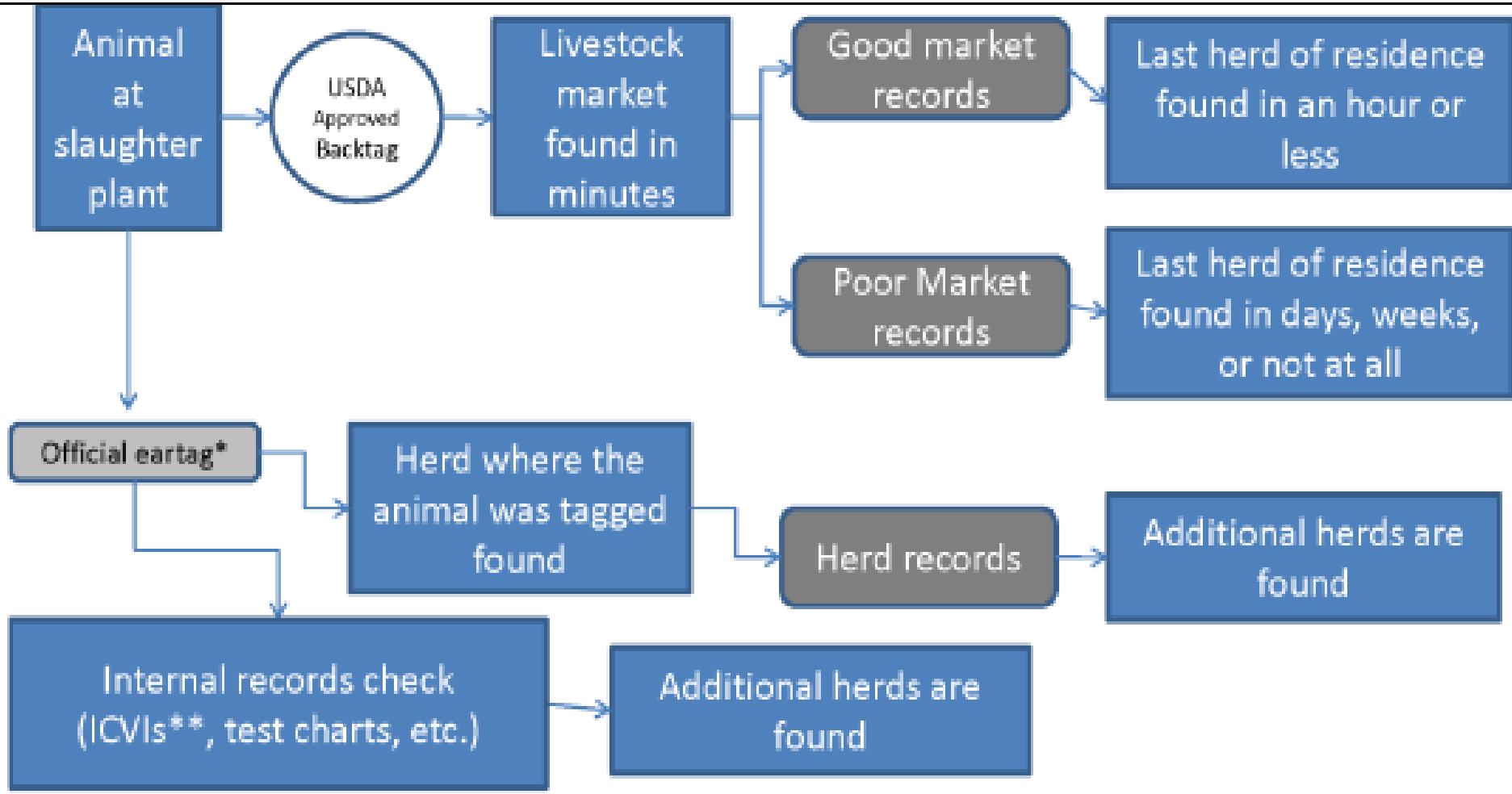
In April 2009, APHIS released the "Benefit-Cost Analysis of the National Animal Identification System," an assessment of the economic costs and benefits of adopting a voluntary NAIS, that found the following:

- The cattle industry estimated cost represented 91.5 percent of the total cost of NAIS for the primary animal species
- Estimated cost for implementing NAIS in the cattle sector, as described in the study, was **$175.9 million annually (at a 90 percent participation level)**
- Economic benefits in both domestic and international markets resulting from enhanced traceability might be greater than the cost savings realized during animal disease control and eradication efforts
- Implementation of NAIS would be more cost effective at higher participation levels

Proposed Rule

- Instead, APHIS prepared an economic analysis for the **proposed** traceability rule, as required by EO 12866, for significant rules

- Review and clearance of the rule started in April 2011 and was completed in August 2011 (published in Federal Register in the same month)



* The proposed rule will lead to an increase in the number of officially identified animals and will require that the eartags be collected at slaughter.

** The proposed rule will increase the number of animals moving interstate with eartags recorded on ICVIs.

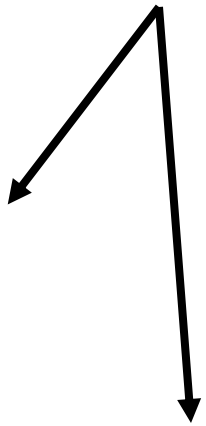
USDA

Proposed Rule (cont.)

DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service
9 CFR Parts 71, 77, 78, and 90
[Docket No. APHIS–2009–0091]
RIN 0579–AD24
Traceability for Livestock Moving Interstate
AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Proposed rule.

Published and made available for comment in several places and requested public comment

www.aphis.usda.gov/traceability/downloads/2011/Proposed%20Rule.pdf



Federal Register / Vol. 76, No. 155 / Thursday, August 11, 2011

Cost Estimation Approach

- The economic analysis provided an estimation of costs
  - Focus on the beef and dairy cattle industries (as most affected by the rule), **30 million of animals, cattle moving interstate, included in the analysis**
  - Estimate expected producer costs of acquiring official animal identifications (ear-tags or electronic devices) and of ICVI (certificate) issuances
  - Expect significantly higher costs if animal identification and other new practice requirements undertaken separately from other routine management practices

Cost Estimation Results

- Total estimated expected producer costs ranged between **$14.5 million and $34.3 million** (if new practices undertaken separately from other routine management practices)
- Or, between **$5.5 million and $7.3 million** (if new practices combined with other routine management practices)

Table 3. Estimated costs of official identification with current management practices

	Estimated Number of Cattle Moving Interstate	Incremental Cost, Low Estimate[5]	Incremental Cost, High Estimate
Using Official ID	10,500,000	$0	$0
Tagging but not using official ID	13,500,000	$2,430,000	$2,430,000
Not tagging	6,000,000	$10,080,000	$28,080,000
Total	30,000,000	$12,510,000	$30,510,000

Table 4. Estimated costs of official identification with modified management practices

	Estimated Number of Cattle Moving Interstate	Incremental Cost[6]
Using Official ID	10,500,000	$0
Tagging but not using official ID	13,500,000	$2,430,000
Not currently tagging	6,000,000	$1,080,000
Total	30,000,000	$3,510,000

USDA

Benefits Evaluation Approach

- The economic analysis also provided an evaluation of benefits:
  - Expected benefits were illustrated using case studies for bovine tuberculosis, brucellosis, and spongiform encephalopathy (BSE) that showed inefficiencies in tracing animal disease occurrences and the potential gains in terms of cost savings.
  - Additional expected benefits also derived from a university study of the value of enhanced ability of the U.S. producers to minimize the trade impacts of animal disease outbreaks.
  - Qualitative estimate was potentially a **$3.7 billion savings over 10 years.**

USDA

Public Comment Period

- Started on August 11, 2011 and ended on November 9, 2011
- APHIS received **1,618 of public comments**
- Most comments were related to cattle id requirements.
- Public comments led APHIS to revise the proposed rule to some extent, resulting in greater flexibility of requirements of the final rule.

Revisions of the Proposed Rule

- The most important revisions included:
  - The final rule provisions related to cattle apply only to animals over 18 months of age that will not need to be identified, but will still require an ICVI for interstate movement
  - If USDA determines that there is a need to include cattle under 18 months of age, then action will be undertaken through a separate rulemaking
  - The final rule allows other than ICVI documents for animal movement, if involved States agree

USDA

Revisions of the Proposed Rule (cont.)

- Revisions also included:
  - No need to re-tagging of animals tagged before the publication of the final rule
  - Some exemptions for equines providing more flexibility for local areas to transport animals across State lines
  - Exemptions provided for “custom slaughtered animals”
  - There are no traceability performance standards for States and Tribes (action will be undertaken through a separate rulemaking in the future)

Final Rule

- APHIS prepared an economic analysis for the **final** rule, as required by EO 12866, for significant rules

- Review and clearance of the rule started in April 2012 and was completed in December 2012 (published in **Federal Register in January 2013**)

Final Rule (cont.)

DEPARTMENT OF AGRICULTURE
Animal and Plant Health Inspection Service
9 CFR Parts 71, 77, 78, and 86
[Docket No. APHIS–2009–0091]
RIN 0579–AD24
Traceability for Livestock Moving Interstate
AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Final rule.

Federal Register / Vol. 78, No. 6 / Wednesday, January 9, 2013

- http://www.gpo.gov/fdsys/pkg/FR-2013-01-09/pdf/2012-31114.pdf

USDA

Cost Estimation and Benefits Evaluation Results

- Total estimated expected producer costs ranged between **$14.5 million and $34.3 million** (if new practices undertaken separately from other routine management practices), **same as the proposed rule**
- Or, between **$10.9** million and **$23.5** million (if new practices combined with other routine management practices), **estimates increased after public comments**
- Also, expected some additional State and Tribal costs but supplemented from Federal funds (**up to $14.2 million**)
- Benefits evaluation approach and results:
  - **Same as the proposed rule**

USDA

Case Study: Margin Protection Program for Dairy and Dairy Product Donation Program (2014)

- Replaces the MILC program (Milk Income Loss Contract Program) --- capped level of payments to ~ 3 million lbs.
- MPP capped a much higher level at 90% of production history, could be much greater.

Table 1

Changes in the size structure of U.S. dairy farms, 2000-2006

Herd size	Number of operations		% change
No. Head	2000	2006	
1-29	30,810	21,280	-31.0
30-49	22,110	14,145	-36.0
50-99	31,360	22,215	-29.2
100-199	12,865	9,780	-24.0
200-499	5,350	4,577	-14.4
500-999	1,700	1,700	0
1,000-1,999	695	870	+25.2
2,000+	280	573	+104.6
Total	105,170	75,140	-25.5

http://www.ers.usda.gov/media/188030/err47_1_.pdf

USDA

Table 3

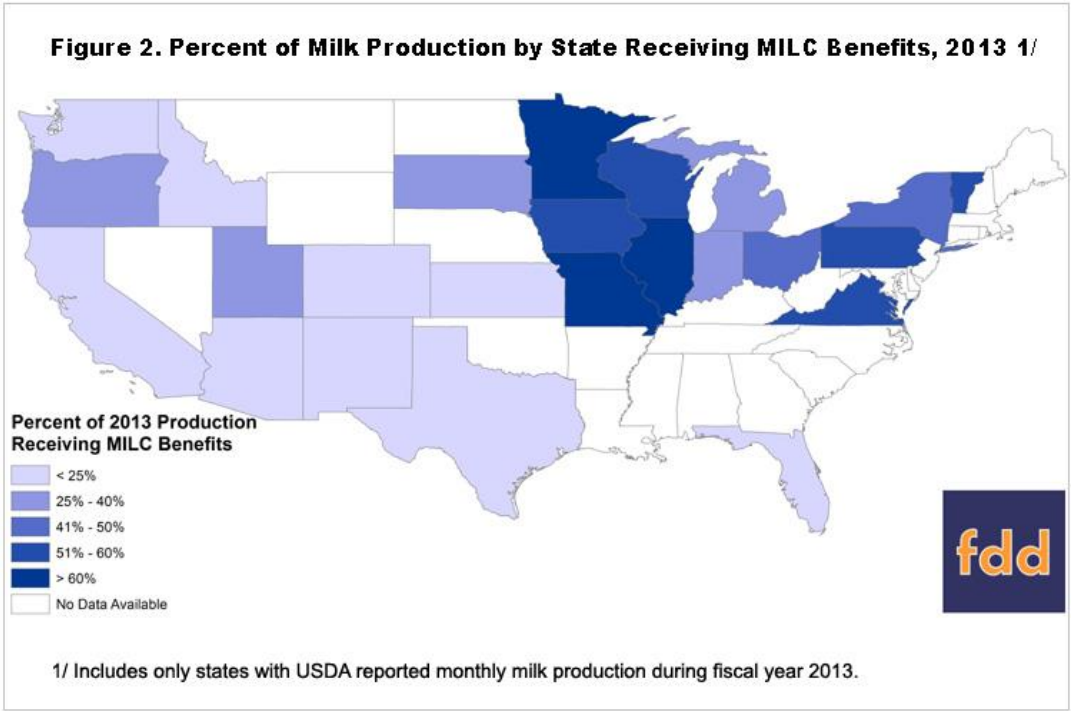
Dairy costs of production, by herd size, 2000

	Enterprise size (number of milk cows)			
	<50	50-199	200-499	>499
Mean herd size (*milk cows*)	33	88	313	955
Output per cow (*pounds*)	14,932	16,157	17,420	17,326
	Dollars per hundredweight			
Total operating costs	11.61	9.75	8.49	8.63
All feed			5.83	6.17
Total labor costs			2.77	1.86
Hired labor			1.45	1.41
Unpaid labor			1.32	0.45
Total ownership costs			3.89	1.90
Housing facilities	1.57	1.31	1.14	0.48
Milking facilities	1.33	0.66	0.10	0.06
Machinery	2.26	1.43	0.54	0.26
Total costs	30.39	20.87	15.15	12.39
Gross value of production	15.74	14.68	14.06	13.41
Net returns	-14.65	-6.19	-1.10	1.02

USDA researchers are continually providing data, which is important for rulemaking

http://www.ers.usda.gov/media/188030/err47_1_.pdf

USDA



In the U.S., Universities often provide detailed analysis based on government data.

http://farmdocdaily.illinois.edu/2014/07/mapping-dairy-safe-net-mllc-margin-protection-program.html

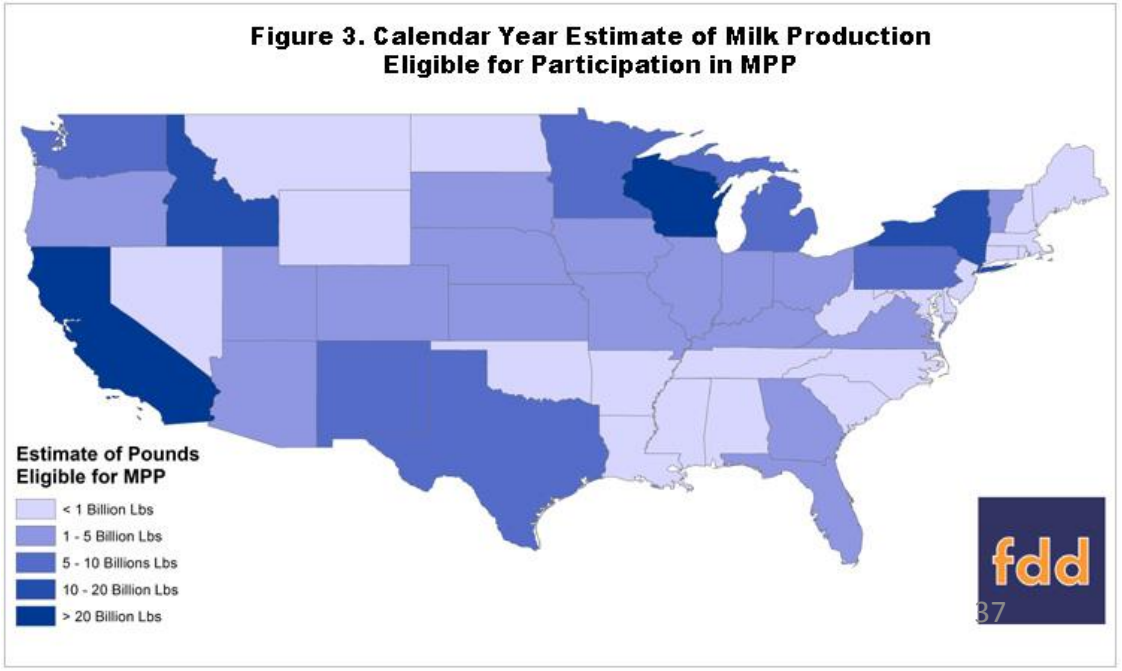


Table 2. Comparing Safety Net Coverage of MILC and MPP for Top Ten (and Notable) Milk Producing States, 2013

	FY 2013 Pounds Receiving MILC Benefits (Bil. Lbs.) 1/	Percent of Milk Production Receiving MILC Benefits 2/	FY 2013 MILC Payments (Mil. $)	Estimated Pounds Eligible for MPP 3/ (Bil. Lbs.)
1. California	5.71	20.50%	$26.20	37.6
2. Wisconsin	10.15	54.80%	$43.90	24.8
3. Idaho	1.47	16.40%	$5.70	12.2
4. New York	4.27	47.30%	$19.30	12.1
5. Pennsylvania	3.75	52.70%	$16.00	9.5
6. Texas	1.25	19.30%	$4.80	8.6
7. Michigan	2.3	37.60%	$10.60	8.2
8. Minnesota	3.79	61.50%	$16.40	8.2
9. New Mexico	0.71	13.00%	$2.90	7.4
10. Washington	1.05	24.70%	$4.90	5.7
11. Ohio	1.74	47.20%	$7.60	4.9
⋮				
22. Illinois	0.84	65.10%	$3.60	1.7
⋮				
U.S. Total	48.6	35.80%	$212.70	182.3

1/ Payments made during October 2012, and January through July 2013. 2/ Adjusted to reflect the frequency of MILC payments. 3/ This total does not reflect farm-level milk production may over or underestimate the actual amount of milk eligible for participation.

http://farmdocdaily.illinois.edu/2014/07/mapping-dairy-safe-net-mllc-margin-protection-program.html

Rules and Regulations

Federal Register
Vol. 79, No. 168
Friday, August 29, 2014

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AI23

Margin Protection Program for Dairy and Dairy Product Donation Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Final rule.

Final Rule published on August 29th (approximately 7 months after passage of the Farm Bill)

ADDRESSES: We invite you to submit comments specifically to address the questions related to intergenerational transfers in this document. In your comment, please specify RIN 0560–AI18 and include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

Solicit Public Comment

Make Transparent

All written comments will be available for inspection online at *www.regulations.gov* and at the mail address above during business hours from 8 a.m. to 5 p.m., Monday through Friday, except holidays. A copy of this rule is available through the FSA home page at *http://www.fsa.usda.gov/*.

USDA

http://www.regulations.gov/#!documentDetail;D=CCC-2014-0009-0002

COST-BENEFIT ASSESSMENT

Date: July 18, 2014
Agency: USDA/FSA
Contact: Milton Madison
Dairy and Sweeteners Analysis Group
Economic and Policy Analysis Staff
Farm Service Agency
United States Department of Agriculture
Washington, D.C. 20250
Phone: 202-690-0050

I. TITLE Margin Protection Program – Dairy and Dairy Product Donation Program.

II. EXECUTIVE SUMMARY

USDA

CBA --- make transparent transfer payments

Table 2 - Examples of MPP-Dairy Expenditures, Fees and Premiums Under Various Assumptions, Using Historic Data

	Estimated MPP-Dairy cost per year *$ million*	Fees and Premiums per year *$ million*	Assumptions
1.2015 MSR	1.8	3.1	75% of operations cover at $4 level
2. Stochastic Estimates	100 to 185	87 to 95	25% of operations cover at $4 level, 50% cover > $4 per cwt on 50% of base
3. 2012 $4 per cwt coverage	350	4	75% of operations cover at$4 level
4. 2012 $6 per cwt coverage	790	50	25% of operations cover at $4 level, 50% cover $6 per cwt on 50% of base
5. 2012 $8 per cwt coverage	4,600	1,750	100% of operations cover $8 per cwt on 90% of base production
6. 2009 $4 per cwt coverage	565	5	75% of operations cover at $4 level
7. 2009 $6 per cwt coverage	1,200	50	25% of operations cover at $4 level, 50% cover $6 per cwt on 50% of base
8. 2009 $8 per cwt coverage	5,730	1,750	100% of operations cover $8 per cwt on 90% of base production

File Edit View History Bookmarks Tools Help

Margin Protection Program De...

www.fsa.usda.gov/FSA/pages/content/farmBill/fb_MPPDTool.jsp

Google

MPP LGM

Margin Protection Program Decision Tool

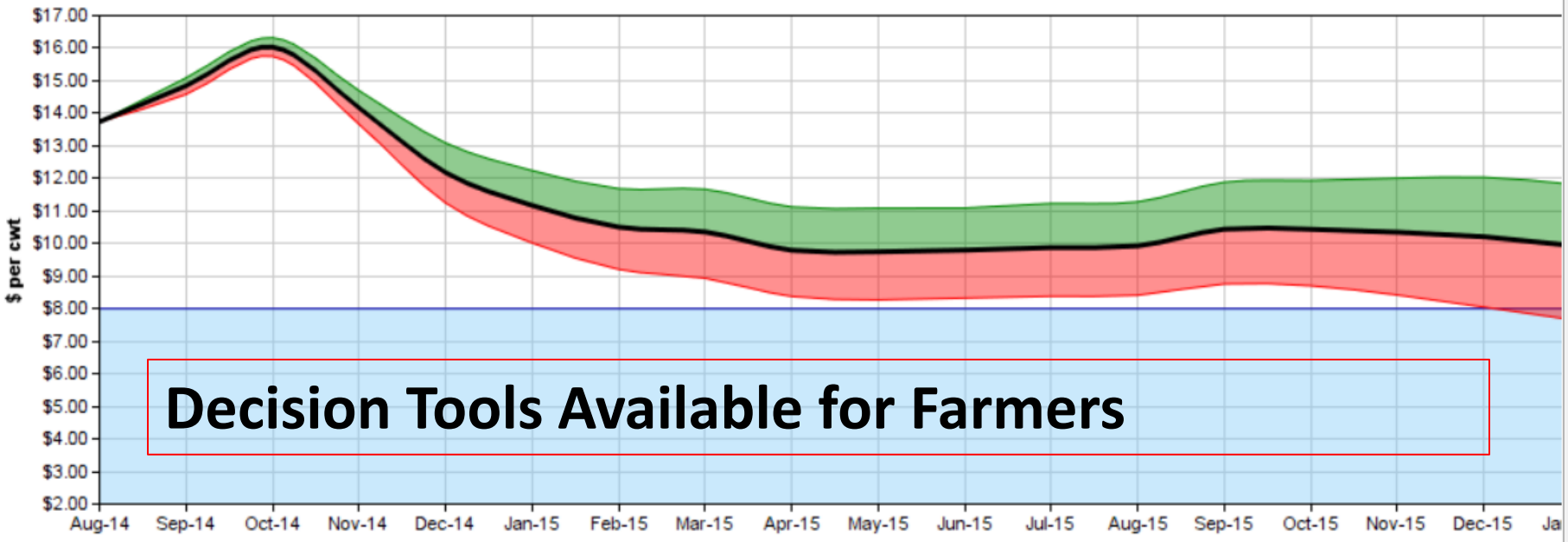
www.DairyMarkets.org

Farm Name: Operation Name Coverage Year: 2015 (Current, Calculated On 10/21/2014) Actual Production History: 1,234,567 lb

Forecast Margin | Select Coverage

Probability Table Forecast Graph

Include Actual Margins



Decision Tools Available for Farmers

The colored bands show the middle 50% probability interval for forecast margins. There is a 25% chance that the margin could be above the green band and a 25% chance that the margin could be below the red band. The graph data and probabilities are calculated from futures market data available on 10/21/2014.

Questions?

Rjohansson@oce.usda.gov

USDA