



[6450-01-P]

DEPARTMENT OF ENERGY

Reducing Regulatory Burden

5 CFR Chapter XXII

10 CFR Chapters II, III, and X

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: As part of its implementation of Executive Order 13563, “Improving Regulation and Regulatory Review,” issued by the President on January 18, 2011, the Department of Energy (Department or DOE) is seeking comments and information from interested parties to assist DOE in reviewing its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. The purpose of DOE’s review is to make the agency’s regulatory program more effective and less burdensome in achieving its regulatory objectives. In this request for information, DOE also highlights its regulatory review and reform efforts conducted to date in light of comments from interested parties.

DATES: Written comments and information are requested on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are encouraged to submit comments, identified by

“Regulatory Burden RFI,” by any of the following methods:

White House website: <http://www.whitehouse.gov/advice>

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: Regulatory.Review@hq.doe.gov. Include “Regulatory Burden RFI” in the subject line of the message.

Mail: U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue, SW., Room 6A245, Washington, DC 20585.

Docket: For access to the docket to read background documents, or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>.

That Department’s plan for retrospective review of its regulations and its subsequent update reports can be accessed at <http://energy.gov/gc/services/open-government/restrospective-regulatory-review>

FOR FURTHER INFORMATION CONTACT: Aaron Stevenson, Office of the Assistant General Counsel for Legislation, Regulation, and Energy Efficiency, U.S. Department of Energy, Office of the General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585, 202-586-5000. E-mail: Regulatory.Review@hq.doe.gov.

SUPPLEMENTARY INFORMATION: On January 18, 2011, the President issued Executive Order 13563, “Improving Regulation and Regulatory Review,” to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. To that end, the Executive Order requires, among other things, that:

- Agencies propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; and that agencies tailor regulations to impose the least burden on society,

consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; and that, consistent with applicable law, agencies select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

- The regulatory process encourages public participation and an open exchange of views, with an opportunity for the public to comment.
- Agencies coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.
- Agencies consider low-cost approaches that reduce burdens and maintain flexibility.
- Regulations be guided by objective scientific evidence.

Additionally, the Executive Order directs agencies to consider how best to promote retrospective analyses of existing rules. Specifically, agencies were required to develop a plan under which the agency will periodically review existing regulations to determine which should be maintained, modified, strengthened, or repealed to increase the effectiveness and decrease the burdens of the agency's regulatory program. DOE's plan and its subsequent update reports can be accessed at <http://energy.gov/gc/services/open-government/restrospective-regulatory-review> .

The Department is committed to maintaining a consistent culture of retrospective review and analysis. DOE will continually engage in review of its rules to determine whether there are burdens on the public that can be avoided by amending or rescinding existing requirements. To that end, DOE is publishing this RFI to again explicitly solicit public input. In addition, DOE is always open to receiving information about the impact of its regulations. To facilitate both this

RFI and the ongoing submission of comments, interested parties can identify regulations that may be in need of review at the following recently established White House website:

<http://www.whitehouse.gov/advise>. DOE has also created a link on the Web page of DOE's

Office of the General Counsel to an e-mail in-box for the submission of comments,

Regulatory.Review@hq.doe.gov.

While the Department promulgates rules in accordance with the law and to the best of its analytic capability, it is difficult to be certain of the consequences of a rule, including its costs and benefits, until it has been tested. Because knowledge about the full effects of a rule is widely dispersed in society, members of the public are likely to have useful information and perspectives on the benefits and burdens of existing requirements and how regulatory obligations may be updated, streamlined, revised, or repealed to better achieve regulatory objectives, while minimizing regulatory burdens. Interested parties may also be well-positioned to identify those rules that are most in need of review and, thus, assist the Department in prioritizing and properly tailoring its retrospective review process. In short, engaging the public in an open, transparent process is a crucial step in DOE's review of its existing regulations.

The Department's dedication to involve the public in the regulatory process has manifested itself in the development of a draft public engagement plan. As part of this plan, the Department will continue already successful public engagement efforts. The ongoing efforts will include seeking public input on the retrospective review process, posting comments on our webpage to encourage the public to share their thoughts on the comments of others, and the existence of a dedicated retrospective review email address. These efforts encourage public engagement in the

retrospective review process, and provide the ability for the public to comment and engage in a dialog on the improvement of DOE regulations.

The draft public engagement plan also contains new, innovative ways of engaging the public in the regulatory review process. In particular, the Department has tasked the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) to assist DOE in the retrospective review process. ASRAC was created as an advisory committee to provide advice and recommendations on the development of standards and test procedures for residential appliances and commercial equipment, certification and enforcement of standards, and product labeling. ASRAC is comprised of representatives from industry, utilities, energy efficiency/environmental advocacy groups, and consumer groups. As a part of the retrospective regulatory review process, the Department has tasked ASRAC to identify particular rules for which revision would have the most positive impact and potential improvement to the regulatory process. ASRAC meetings are also open to the public and notice of ASRAC meetings are published in the *Federal Register*. ASRAC has also been tasked with writing a report that details their recommendations for the regulatory review process. The Department will review this report and, as appropriate, incorporate the recommendations as a part of its retrospective regulatory review process. ASRAC has already held two meetings at which retrospective regulatory review was on the agenda. Involving ASRAC in the regulatory review process will provide the public with another means to help the Department determine the regulations that could benefit the most from retrospective review.

Department of Energy Retrospective Review Successes

The Department highlights the examples below as retrospective review successes resulting from public engagement in the regulatory process. For further details and additional examples, the public is invited to review DOE's February 2015 update report, available at <http://www.energy.gov/gc/services/open-government/restrospective-regulatory-review> .

- 1) DOE waived the R-Value Door Requirement for Walk-in Cooler/Freezer(s) (WICF) for a small business manufacturer. Due to an existing statutory standard, a small business was not going to be able to manufacturer the product that was subject to the DOE energy conservation standard. The Department used a flexible approach that facilitated innovation and prevented substantial hardship from falling on the company while preserving the Department's goal of increasing energy efficiency. As a result of the waiver, the company was able to retain over 100 employees.
- 2) DOE promulgated a rule to extend the test procedure compliance date for walk-in coolers and freezers and metal halide lamp fixtures. The Department published the final rule to clarify the compliance date by which manufacturers must use portions of the test procedure that was published in the past and to adopt an extension to the compliance date for which the manufacturers need to certify compliance to the Department of metal halide lamp ballasts and fixtures. The Department was responding to concerns raised by manufacturers in the promulgation of the rule and the extension of compliance dates. Moving forward, the Department will continue to consider feedback in determining whether the testing procedures are warranted. In working with interested parties to develop the rule and the extension of the compliance dates the manufacturers were benefitted with extra guidance on the rule and additional time in the certification process.

- 3) The Department also worked with the public to avoid further economic hardship resulting from its certification and enforcement regulations. The Department received feedback from manufacturers who voiced their concerns that the testing requirements under the rule would take several years to complete and the compliance date associated with this program could undermine their research and development efforts. As a result of this, the Department published an extension of compliance dates for a number of other types of commercial equipment subject to the final energy efficiency certification and enforcement rule. The Department will continue to work with the public and interested parties in determining whether future adjustments to its certification and enforcement procedures are warranted. The Department also updated the Federal Building Standards Rule as part of its retrospective review process. The Energy Conservation and Production Act requires DOE to update the baseline federal energy efficiency performance standards for the construction of new federal buildings. These federal buildings include commercial and multi-family high-rise residential buildings. When developing the rule, the Department considered comments and information received from interested parties. The result of this process is a rule intended to establish baseline energy standards while providing flexibility in how these requirements are achieved.
- 4) DOE has also made it easier for companies to report information by analyzing the Procurement Reporting and Record-keeping Burdens. The Department initiated the use of asset management software to ease the reporting of property inventories that is required by the Department of Energy Acquisition Regulation Act. This software streamlines the requirements for submitting information to the Department, and the Department will continue, as part of its retrospective review efforts to consider any

additional feedback received regarding paperwork collection. This initiative is estimated to reduce the reporting burden by 225,166 hours for the Department's property management and operating contractors.

List of Questions for Commenters

The following list of questions is intended to assist in the formulation of comments and not to restrict the issues that may be addressed. In addressing these questions or others, DOE requests that commenters identify with specificity the regulation or reporting requirement at issue, providing legal citation where available. The Department also requests that the submitter provide, in as much detail as possible, an explanation why a regulation or reporting requirement should be modified, streamlined, expanded, or repealed, as well as specific suggestions of ways the Department can better achieve its regulatory objectives.

- (1) How can the Department best promote meaningful periodic reviews of its existing rules and how can it best identify those rules that might be modified, streamlined, expanded, or repealed?
- (2) What factors should the agency consider in selecting and prioritizing rules and reporting requirements for review?
- (3) Are there regulations that are or have become unnecessary, ineffective, or ill advised and, if so, what are they? Are there rules that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?
- (4) Are there rules or reporting requirements that have become outdated and, if so, how can they be modernized to accomplish their regulatory objectives better?

- (5) Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or slightly different approach is justified?
- (6) Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?
- (7) Are there regulations, reporting requirements, or regulatory processes that are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways?
- (8) Are there rules or reporting requirements that have been overtaken by technological developments? Can new technologies be leveraged to modify, streamline, or do away with existing regulatory or reporting requirements?
- (9) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations? Are there existing sources of data the Department can use to evaluate the post-promulgation effects of regulations over time? We invite interested parties to provide data that may be in their possession that documents the costs, burdens, and benefits of existing requirements.
- (10) Are there regulations that are working well that can be expanded or used as a model to fill gaps in other DOE regulatory programs?

The Department notes that this RFI is issued solely for information and program-planning purposes. Responses to this RFI do not bind DOE to any further actions related to the response. All submissions will be made publically available on. <http://www.regulations.gov>.

Issued in Washington, DC on June 24, 2015.

Steven P. Croley
General Counsel

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