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General Comment

See attached file(s)

Attachments

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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of its existing rules and how can it best identify those rules that might be modified, streamlined, expanded, or repealed?***

Meaningful periodic reviews should be founded on a well defined and transparent process engaging all stakeholders, including NNSA, other regulatory jurisdictions, contractors and the public.

Reviews should be founded on clear goals:

- **promote NNSA's initiatives on governance reform and use of industry standards**
  - **identify corporate management processes in-lieu of the DOE/NNSA management processes**
  - **reduce low value DOE Orders and implementation of consensus standards such as the International Organization for Standardization (ISO) 9001, ISO 14001, and Voluntary Protection Program (VPP)**
- **ensure the purpose (desired outcome) of the rule is current and clear**
- **drive flexible implementation focused on what, not how**
- **enable cost/benefit optimization**

The review process could be coordinated with existing contractor forums (e.g. EFCOG) with links to impacted stakeholders. Lessons learned from related order reduction and governance initiatives should be incorporated into the review process.

2. ***What factors should the agency consider in selecting and prioritizing rules and reporting requirements for review?***

While all requirements should be evaluated over the review cycle, e-polling of stakeholders could establish the review prioritization. Prioritization could also be based on rules;

- **unnecessarily onerous in implementation**
- **associated with high risk/consequence operations (nuclear safety),**
- **in which data indicates relatively higher levels of non-compliance,**
- **characterized by redundancy or overlap (Orders, CFRs, Manuals, Policies),**
- **where cost/benefit is questionable,**

While all rules/regulations should ultimately be subject for review, those propagated earlier should be reviewed first.

3. ***Are there regulations that simply make no sense 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 Are there rules that can simply be repealed without impairing the Department's regulatory programs and, if so, what are they?***

Where NNSA has implemented its new oversight model has enabled the elimination of many DOE orders, including all of those that created management systems (ISM, CAS, etc.). The table below details the magnitude of DOE Order and related requirements reduction this initiative has enabled at one pilot site.

Directive	Before Transformation	After Transformation
DOE Orders	87	31
DOE Regulations	13	5
DOE Requirements	30	10
NFPA	14	12
Standards/Codes	8	6
Other	8	7
Total	160	71

The experience of the new oversight pilot program indicates that the intent of DOE Orders, Regulations and Requirements in many cases can be achieved through other more commercial mechanisms (CFRs, consensus standards) with no degradation to performance.

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?***

Rules and reporting requirements that are outdated are those that are prescriptive in nature in that, contrary to NNSA initiatives, define "how" rather than the "what". Rules should be modernized where the requirements are truly requirements and not implementation instructions

10 CFR 851 cites specific requirements such as OSHA, DOE Manuals, NEC, NFPA, etc., which, in some cases, have become outdated or a more current edition has been released. There is no mechanism for updating site specific requirements associated with 'edition' changes.

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?***

10 CFR 851, Appendix A, Occupational Medicine, establishment of wellness and/or surveillance programs for construction subcontractors, is cumbersome. Other established regulations already address employer requirements for occupational medicine surveillance programs

6. ***Does the Department currently collect information that it does not need or use effectively to achieve regulatory objectives?***

Regulations related to ORPS, CAIRS, NTS, and Lessons Learned represent redundant reporting systems that contribute inefficiency and maintenance costs. Integration of these systems would provide DOE with a single reporting system that can be used across the complex.

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?***

The expectation of FAR 52.204-10 is that first-tier subcontract awards greater than $25,000 be reported monthly through the Federal Government's database. The relatively low threshold for reporting ($25,000) results in significant effort being required to ensure compliance. It is questionable if the level of effort required to meet the intent of this standard is commensurate with the benefit.

Additionally data required to be obtained from the seller is difficult to obtain/validate. Problems include:

- **Seller can refuse or delay the submittal of data. The contractor has no recourse under the clause. Yet the requirement is for the contractor to enter the required data in the month following the procurement.**
- **FAR 52.204-10 does not provide a course of action for information not provided or not provided timely. It is not clear if the contractor could proceed on with award if information had not been provided within the necessary timeline.**
- **Seller can report incorrect information which the contractor would then enter into the Federal data base as "correct" data. Should anyone challenge the data, or an OIG audit the data at some future time, the contractor would be unable to explain or defend the information. Yet the contractor may be held liable for the incorrect data entry.**
- **In regards to the executive compensation reporting requirement, the seller can claim one of the exclusions included in the clause and the contractor is required to accept that response.**
- **Information being provided may be considered sensitive "company private" information which they do not wish to share with another company. Acceptance of this proposal should allow the seller to enter the data directly into the Federal data base without unnecessary proliferation of sensitive information.**

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?***

Significant efficiency could be achieved by the integration/streamlining and optimizing of the existing databases (CAIRS, ORPS, Lessons Learned, NTS, FEMP, PPTRS, FedCenter)

9. ***Are there any of the Department's regulations that fail to make a reasoned determination that its benefits justify its costs; or that are not tailored to impose the least burden on society, consistent with obtaining the regulatory objectives, taking into account, among other things, and to the stent practicable, the costs of cumulative regulations; or that fail to 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)***

It is not readily apparent that the aforementioned criteria (cost/benefit, burden,) are evaluated during the promulgation of regulations. Many regulations appear counter to the intent of least burdensome and most cost effective approach. The current status is to continue to add more to distinguish one agency from another. For instance if NNSA wants to take exception to or add to a DOE Order, a supplemental will be prepared and released. This requires the responsible party to meet both the DOE Order and the Supplemental document. A good example here is DOE O 226.1. This guidance includes an order, a policy, a supplemental, and a NAP - - in addition to specific contract language and references from numerous other types of regulations.

10. ***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.***

The cumulative "value" of all the continuous improvement activities completed over the years related to reduced reporting, governance, and streamlining of systems could serve as a useful metric.

Collecting performance summaries from industry standards such as ISO may be another opportunity (i.e. the longer the company is ISO certified, the fewer the significant findings). Consider using the appropriate elements from the General Support portion of the functional cost report to estimate the cost to maintain requirements. Estimating the cost of personnel in organizational structures whose responsibility it is to manage requirements is also another approach. To protect the individual sites and associated rates, this could be calculated at an enterprise level.

11. ***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 use of contract H Clauses is an excellent mechanism.