Department of Energy
Preliminary Plan for Retrospective Analysis of Existing Rules
April 29, 2011 Draft

Executive Summary

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. Executive Order 13563 recognizes the importance of maintaining a consistent culture of retrospective review and analysis throughout the executive branch. To that end, Executive Order 13563 requires agencies, by May 18, 2011, to develop a plan for review of their existing significant regulations.

The Department of Energy (DOE or the Department) is committed to maintaining a consistent culture of retrospective review and analysis. Its plan sets forth a process for identifying significant rules that are obsolete, unnecessary, unjustified, excessively burdensome, or counterproductive. Once such rules have been identified, DOE will, after considering public input on any proposed change, determine what action is necessary or appropriate. Moreover, DOE's initial identification of rules meriting review does not represent the completion of the plan. Instead, 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. As explained in more detail below, DOE's General Counsel will report to the Deputy Secretary and the agency's Regulatory Policy Group on an ongoing periodic basis as to progress in identifying additional rules or policies that may be unnecessarily burdensome and actions taken to address those rules or policies.

Although DOE's implementation has only just begun, as a result of public input and its own internal analysis, DOE has already accomplished or proposed a number of significant changes in retrospective review of specific regulations:

1. In response to industry concerns that a new energy-efficiency rule would cost as much as $500 million to implement and would significantly interrupt industry research and development efforts, DOE has proposed an 18-month extension of that rule.

2. DOE has issued a notice of proposed rulemaking considering the use alternative efficiency determination methods (AEDMs), such as computer modeling, to reduce testing burden and eliminate many millions of dollars of testing costs. This effort is particularly significant as industry has suggested that testing under the current rule could take several years to complete and undermine their research and development efforts.

3. DOE has issued a proposed rule to amend its existing National Environmental Policy Act (NEPA) regulations. The changes, proposed primarily for the categorical exclusions provisions, are intended to better align DOE's categorical exclusions with current activities and recent experiences, and to update the provisions with respect to current

technologies and regulatory requirements. DOE believes the changes made by this rulemaking could save the taxpayers as much as $100 million over ten years and provide greater transparency to the public as to the NEPA standards that DOE employs in analyzing particular technologies.

4. DOE is undertaking a series of initiatives to reduce paperwork burdens on recipients of financial assistance. DOE expects these initiatives to result in more than a 90% reduction – a reduction of over 270,000 hours -- in the paperwork burden imposed on recipients of DOE's financial assistance.

5. DOE has sought public input on the potential uses of computer simulations to further reduce testing costs and burdens relating to efficiency certifications.

6. After receiving public comment on a draft interpretive rule, DOE issued enforcement guidance to explain how DOE intends to enforce existing water conservation standards for showerheads. DOE also provided an enforcement grace period of two years to allow such manufacturers to sell any remaining non-compliant products. DOE changed course in order to enforce the existing standards in a manner that avoids needless economic dislocation that some industry representatives estimated at $400 million.

7. DOE has issued a proposed rule to standardize procedures for the submission and protection of trade secrets and privileged or confidential commercial or financial information.

8. The Department is considering revisions to its regulation concerning sales from the Strategic Petroleum Reserve, to streamline the process for periodic review and publication of the standard contract provisions.

9. DOE has published a test procedure for fluorescent lamp ballasts that reduces testing burdens by adopting a metric suggested by public comment. The revised procedure is anticipated to reduce testing time, and therefore laboratory testing costs, by 50 percent.

In this plan, DOE provides additional detail on these activities and other actions relating to review of its appliance efficiency program, its financial and other assistance programs, and its open government initiatives, as well as its plans for building on these successes in the future in order to sustain a culture of coordinated and careful review of existing regulation to remove unnecessary burdens on the public.

Department of Energy Plan: Public Access and Participation and Early Review Successes

1. Public Access and Participation

To meet the requirements of the President's directive to review its existing significant regulations, DOE has taken several new measures and will continue to follow existing statutorily mandated requirements and OMB guidance. DOE plans to use the methods and review

processes set forth below to ensure the continuation of a strong, ongoing culture of retrospective analysis and to set priorities for retrospective review. DOE also will add internal safeguards to ensure that these reviews occur in a coordinated fashion and a timely manner.

As an important initial step in this process, on January 31, 2011, the Department announced two immediate actions to implement the review requirement of Executive Order 13563.

First, to engage the public in a transparent review process, the Department issued, both online and in the *Federal Register*, a request for information asking the public how best to streamline existing regulations and to identify rules that are obsolete, unnecessary, unjustified, or simply no longer make sense. (76 FR 6123, Feb. 8, 2011; http://www.gc.energy.gov/1695.htm) A press release alerted the public to issuance of the RFI. In the RFI, DOE provided a period for public comment followed by a reply comment period, which DOE subsequently extended until April 15, 2011 in order to ensure adequate time to review and comment. The dual comment periods allowed the public to be heard as to DOE's regulatory review and also to provide comment on the ideas submitted by other members of the public, fostering a constructive dialogue on the review process.

Second, the Department has created a link on the Office of the General Counsel's web page and a dedicated email in-box, regulatory.review@hq.doe.gov, which can be used by interested parties to identify to DOE—on a continuing basis—regulations in need of review in the future. DOE will continue to accept comments and information at this email address after publication of the final plan and will consider in its retrospective review process any comments and information received.

All comments and reply comments received to date have been made publicly available at http://www.gc.energy.gov/1705.htm. DOE received 24 comments and reply comments and is currently reviewing the information received in those comments. DOE notes that the comments received contained a significant amount of substantive information and that the rulemakings to which those comments apply are very complex. As a result, while DOE provides preliminary responses to many of the comments in this draft plan in the sections that follow, additional time is needed to consider the comments fully and develop the appropriate course of action as DOE engages in retrospective review of its regulations.

As a complementary initiative, DOE also solicited the views of its employees on improving its regulatory program. DOE set up a dedicated email account for employee responses: smarterDOE@hq.doe.gov, and will consider any employee suggestions as part of its regulatory review process. DOE will accept anonymous comments from employees or, upon request, the General Counsel's office will remove email addresses and other identifying information from employee suggestions before circulating those suggestions for consideration through DOE. DOE received a number of comments from its employees and is currently reviewing those comments. As with comments received from the public, upon review of employee comments, DOE will take appropriate retrospective review action.

DOE has already developed its first candidate list of rules for retrospective review, described below at page 9, based in large part on the public comments received in response to DOE's RFI.

Because public comments and its own internal review may highlight strong candidates for retrospective review at any time, DOE plans to update its list continually. DOE will publish notice in the Federal Register announcing the continued opportunity to submit comments on the retrospective review of DOE's regulations every 6 months, beginning in November 2011. DOE's Office of the Assistant General Counsel for Legislation, Regulation and Energy Efficiency will continually review public and employee comments and advise DOE's General Counsel as to the substance of those comments. DOE's General Counsel will report to the Deputy Secretary and DOE's Regulatory Policy Group, comprised of the senior leadership of the Department, in July 2011 as to progress in identifying additional rules or policies that may be unnecessarily burdensome and actions taken to address those rules or policies, and will again do so again in January 2012 and every six months thereafter. DOE leadership will then provide direction on actions to be taken by DOE to successfully implement the regulatory changes resulting from its review.

Success Stories from Early Efforts at Retrospective Review

As noted at the outset, DOE has already made or proposed changes to its rules, guidance documents, and paperwork requirements as a result of retrospective review. Several significant examples are described below:

On April 19, 2011, DOE proposed to extend the compliance date for some commercial products subject to its final energy efficiency certification and enforcement rulemaking. See http://www.gpo.gov/fdsys/pkg/FR-2011-04-19/pdf/2011-9473.pdf. DOE did so in response to concerns raised by several commenters both in responding to DOE's retrospective review RFI and otherwise. Those commenters stated that the testing required by the rule would impose a significant cost burden. Indeed, an estimate by one industry commenter put the costs at well over $500 million, and the time required to complete the necessary tests at several years. Commenters also stated that the testing burden would push aside research and development activities, thus curtailing manufacturers' ability to develop new, more efficient and better performing products.

In response to these concerns, DOE proposed an 18-month extension to the compliance date for the certification provisions for commercial refrigeration equipment; commercial heating, ventilating, air-conditioning (HVAC) equipment; commercial water heating equipment; walk-in coolers; walk-in freezers; and automatic commercial ice makers. DOE is also considering extending the compliance date for the certification provisions for other commercial equipment based on comments.

Also in response to these concerns, in a related but independent action, DOE issued a request for information (RFI) on April 8, 2011 (available at *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/arm_aedms_rfi.pdf*) seeking comment on, among other things, the use of alternative methods for determining the efficiency of commercial and industrial equipment. DOE took this action because it has become aware of concerns related to its revised regulations for alternative efficiency determination methods (AEDMs). The Department will use this information as appropriate to propose revisions to improve the existing AEDM provisions. For commercial manufacturers, the Department understands that addressing their concerns with

the AEDM provisions may alleviate the burdens, including the millions of dollars in testing costs and the limitations on testing laboratory space for needed research and development activities, reported by these manufacturers of complying with DOE's existing regulations and the March 2011 Final Rule certification reporting provisions.

On March 4, 2011, DOE issued enforcement guidance to explain how DOE intends to enforce existing water conservation standards for showerheads. The guidance is available at: http://www.gc.energy.gov/documents/Showerhead_Guidancel.pdf. DOE had originally asked for comment on a draft interpretive rule that would have interpreted the statutory term "showerhead," but decided instead to issue the enforcement guidance. DOE also provided an enforcement grace period of two years to allow such manufacturers to sell any remaining non-compliant multi-nozzle products, and to give manufacturers the opportunity to adjust their product designs to ensure compliance with EPCA and DOE's regulations. As stated in the final guidance document, DOE changed course in order to enforce the existing standards in a manner that avoids needless economic dislocation that some industry representatives estimated at $400 million.

DOE has also proposed changes to its existing National Environmental Policy Act (NEPA) regulations. The changes, proposed primarily for the categorical exclusions provisions, are intended to better align DOE's categorical exclusions with current activities and recent experiences, and to update the provisions with respect to current technologies and regulatory requirements. Comments were originally due to DOE by February 17, 2011 but DOE reopened the public comment period until March 7, 2011 at the request of a number of commenters. DOE is currently considering the public comments received and believes the changes made by this rulemaking could save the taxpayers as much as $100 million over ten years and provide greater transparency to the public as to the NEPA standards that DOE employs in analyzing particular technologies.

DOE also issued a proposed rule to standardize across its programs the procedures for the submission and protection of trade secrets and commercial or financial information that is privileged or confidential, where such information is submitted by applicants for various forms of DOE assistance. 76 FR 13300 (March 11, 2011). DOE's program regulations for providing assistance ((including financial assistance such as grants, cooperative agreements, and technology investment agreements, as well as loans and loan guarantees) contained a number of different requirements for the marking of confidential data. Providing consistent marking requirements will increase transparency, reduce burden on applicants for assistance, and speed responses to FOIA requests.

Additionally, DOE recently issued a final test procedure for fluorescent lamp ballasts that adopts a new test metric that should reducing testing burdens. DOE solicited comment on all aspects of the test procedure pursuant to the periodic review requirement of the Energy Policy and Conservation Act of 1975, as amended (EPCA). As a result of comments received, DOE reconsidered its proposed approach and issued a supplemental proposed rule setting forth a measurement method offered by commenters on the proposal. The final test procedure adopted the public's suggested test method and is anticipated to reduce testing time, and therefore laboratory testing costs, by 50 percent.

To ease paperwork burdens, DOE has undertaken three distinct initiatives in response to the 2010 and 2011 Information Collection Budget (ICB) data calls.[1] These initiatives are as follows:

- DOE is seeking to reduce the data-collection burden imposed on the public by the Department's one-time evaluation of benefits created by weatherization assistance provided as a result of the American Recovery and Reinvestment Act. In particular, DOE is:

  1. Using a shorter form and pre-populating some surveys with data from previous surveys or from the Weatherization Program's online reporting data system;
  2. Consolidating utility bill collection requests; and
  3. Extracting more information from available electronic databases directly rather than burdening grantees or subgrantees.

- DOE is considering a series of steps to reduce the reporting burden on the more than 2350 states, localities, and tribes that are participating in the Energy Efficiency and Conservation Block Grant Program (EECBG). DOE is considering the following specific steps:

  1. Eliminate monthly reporting for EECBG formula grants;
  2. Remove selected data fields from the required quarterly report for EECBG formula grant recipients;
  3. Improve the user interface of PAGE, EECBG's web-based reporting system for formula grant recipients.

- DOE will completely revise the information collection requirements imposed on future grant recipients. Specifically, DOE will remove EECBG reporting from this collection and will revise the current retrospective report to be forward-looking only.

  The above procedures are expected to result in more than a 90% reduction in the paperwork burden imposed on recipients of DOE's financial assistance, resulting in only 29,998 burden hours rather than the previous burden of 312,500 burden hours.

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[1] The Information Collection Budget (ICB) is a management tool used by the Office of Management and Budget (OMB) and DOE officials to account for and control the total paperwork and information collection burden that the federal government and individual agencies are placing on the public. The burden for an individual collection is most commonly calculated by multiplying the estimated time required to respond by the number of respondents.

OMB issues a call for the ICB each year. Agencies are asked to confirm a listing of changes in burden hours and costs for the previous fiscal year as provided by OMB, and any new information collections for the upcoming fiscal year. The annual OMB data call provides specific instructions on the information to be included about new collections and any other information OMB wants highlighted.

OMB annually produces a comprehensive Information Collection Budget of the United States Government (Office of Management and Budget) which is included with its annual report to Congress. DOE submits to OMB an Information Collection Budget for the Department which OMB uses to produce its report.

In the same vein, DOE has received comments on its paperwork burdens in response to its RFI. In particular, commenters were concerned about the burdens of responding to funding opportunity announcements from the Advanced Projects Research Agency-Energy (ARPA-E), as well as disproportionate reporting burdens faced by small businesses. DOE will look carefully at appropriate reductions to its information collection burdens as a result of these comments, while ensuring collection of the data necessary to administer DOE's programs.

Department of Energy Plan: Current Regulatory Review Efforts and Candidate Rules for Retrospective Review

1. Current Regulatory Review Efforts

Retrospective Review: DOE Process

DOE's methods and schedule for retrospective review include, as described above, publication in the Federal Register of a notice announcing the continued opportunity to submit comments on the retrospective review of DOE's regulations. This publication will occur every 6 months, beginning in November 2011, and public and employee comments will be continually reviewed by DOE's Office of the Assistant General Counsel for Legislation, Regulation and Energy Efficiency. DOE's General Counsel will be advised as to the substance of those comments and will report regularly to the Deputy Secretary and DOE's Regulatory Policy Group as to progress in identifying additional rules or policies that may be unnecessarily burdensome and actions taken to address those rules or policies. The first report will occur in July 2011, followed by another report in January 2012 and additional reports every six months thereafter. DOE leadership will provide direction to DOE to ensure successful implementation of the regulatory changes resulting from this continued retrospective review.

Retrospective Review: Public Education

A key part of DOE's regulatory reform effort is to maintain transparency and openness to the public. Toward that end, DOE posted on the Office of the General Counsel's website information on public participation in DOE rulemaking proceedings. See http://www.gc.energy.gov/1402.htm. The website offers guidance to the public on how to:

- Learn about how the rulemaking process works with the Reginfo.gov Reg Map.
- See all published DOE documents regarding public proceedings at the Federal Register.
- Search for DOE proposed rules and supporting documents, submit public comments on a proposed rule, and read other public comments at regulations.gov.
- Read currently effective DOE rules at the Electronic Code for Federal Regulations.
- Search pending and final DOE directives at the DOE Departmental Directives Program website.
- See which DOE proposed publications are currently under review at the Office of Management and Budget's (OMB) Reginfo.gov webpage or learn more about OMB's role in reviewing Federal Regulations.
- Find a collection of rulemaking information regarding one of DOE's largest regulatory program, at its Appliances and Commercial Equipment Standards Program website.

- Obtain regulatory information regarding the Federal Energy Management Program (FEMP), which sets energy use requirements for federal agencies.
- Use valuable resources provided by DOE's Building Energy Codes Program. This program serves as an information resource on national model energy codes for residential and commercial buildings.
- Find numerous rules, directives, standards, and guidance provided by The Office of Health, Safety and Security, which establishes DOE safety regulations.

Retrospective Review: Statutory and Other Legal Requirements

Additionally, DOE is required by statute to review the substance of many of its key regulatory requirements. In particular, DOE implements Title III of EPCA, which sets forth a variety of provisions designed to improve energy efficiency of covered consumer products and commercial and industrial equipment. 42 U.S.C. 6291, et. seq.

In light of the fact that technologies advance over time, EPCA recognizes the value of periodic review of established energy conservation standards and test procedures. As a result, EPCA contains explicit requirements for the review and amendment of both standards and test procedures. With respect to energy conservation standards, EPCA mandates that DOE, "not later than 6 years after issuance of any final rule establishing or amending an energy efficiency standard…publish (A) a notice of the determination of the Secretary that standards for the product do not need to be amended… or (B) a notice of proposed rulemaking including new proposed standards" based on certain criteria enumerated in the statute. EPCA also provides that any person may petition DOE to conduct a rulemaking to determine whether existing energy conservation standards should be amended, and provides criteria for DOE to consider in determining whether to grant a petition. For test procedures, EPCA requires DOE to "[a]t least once every 7 years…review test procedures for all covered products and (i) amend test procedures with respect to any covered product, if the test procedure would more accurately or fully comply with [EPCA]; or (ii) publish notice in the Federal Register of any determination not to amend a test procedure."

Related to its procedures for establishing or amending energy conservation standards, DOE received comments in response to its RFI expressing concern that changes DOE announced in November 2010 to expedite its regulatory process might reduce their opportunity to provide data and input for the analyses underlying the standards.[2] In response, DOE notes that it will continue to publish framework documents and preliminary analyses as appropriate. In some cases, DOE will provide data and information to the public for review and comment through Requests for Information and publication of the information on its website. These processes will provide the public with the same access to the information underlying DOE's rules and opportunity to comment on that information or provide additional input, but through a more streamlined and efficient process. For all rulemakings, DOE will continue to provide public meetings to explain its underlying analyses to the public and take comment on those analyses. DOE has recently begun providing for participating in the public meetings through webinars to broaden the ability of the public to participate.

[2] *See* http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/changes_standards process.pdf

DOE also plans to continue consulting with the Energy Efficiency and Renewable Energy Advisory Committee (ERAC) on revisions to its energy conservation standards. This advisory committee provides advice and recommendations to the Secretary of Energy on the research, development, demonstration, and deployment priorities within the field of energy efficiency and renewable energy. DOE publishes notice of ERAC meetings in the Federal Register, and members of the public are welcome to observe the business of the meeting of ERAC and to make oral statements during the specified period for public comment. Members of the public can also submit written comments for ERAC consideration. DOE will consider the advice and recommendations of the ERAC in conducting retrospective regulatory reviews.

In the development of its energy conservation standards and test procedures, DOE also consults as appropriate with a number of other federal agencies that have jurisdiction or related programs, including the Department of Justice, the Federal Trade Commission, the Department of Commerce's National Institute of Standards and Technology, and the Environmental Protection Agency. In response to commenters' concerns about unnecessarily duplicative testing and reporting requirements, DOE has worked, and will continue to work, with EPA on ENERGY STAR issues.

Relevant statutes and rules for programs other than those relating to energy efficiency also include periodic review requirements. For example, DOE regulations require the periodic review of the standard sales provisions for contracts involving the price competitive sale of petroleum from the Strategic Petroleum Reserve (SPR). DOE is considering revisions to this regulation to streamline and simplify the process for periodic review and publication of the standard sales provisions.

DOE also conducts reviews of existing regulations for their impact on small entities, pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 601 et seq. (RFA). The RFA requires the Department to plan for the periodic review of agency-issued rules that have or will have a significant economic impact on a substantial number of small entities (5 U.S.C. § 610). The purpose of this review is to determine whether such rules should be continued without change, amended, or rescinded, consistent with the stated objectives of the applicable statutes. The Department has guidance for conducting section 610 reviews that directs, in reviewing any particular rule, the minimization of any significant economic impact of the rule on a substantial number of small entities, consistent with applicable law.

DOE reviews its significant guidance documents pursuant to OMB Bulletin 07-02 (January 18, 2007). Pursuant to the Bulletin, DOE established an email address, guidance@hq.doe.gov, to provide a means for the public to submit comments electronically on significant guidance documents, and to submit a request electronically for issuance, reconsideration, modification, or rescission of significant guidance documents. Also pursuant to the Bulletin, DOE solicits public comment on any economically significant guidance documents and considers any comments received in determining how to proceed with the proposed guidance.

In addition, DOE reviews its significant information collections at least once every three years pursuant to the requirements of the Paperwork Reduction Act (PRA). The PRA requires agencies, in requesting extension of the approval of an information collection, to conduct a

thorough review of that collection. The review must include an evaluation of the need for the collection.

2. Candidate Rules for Retrospective Review

DOE has developed an initial list of candidate rules for review over the next two years. This list responds in significant part to items identified in public comments, and it includes rules relating to both energy-efficiency and non-energy-efficiency matters:

Energy Efficiency Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters
Energy Efficiency Standards Determination for Distribution Transformers
Energy Efficiency Standards for Electric Motors
Energy Efficiency Standards for Commercial Refrigeration Equipment
Proposed Statement of Policy for Adopting Full-Fuel-Cycle Analyses Into Energy Conservation Standards Program
Administrative Procedures for the Import and Export of Natural Gas
Administrative Procedures for Exports of Electricity
Administrative Procedures for Presidential Permits for International Electric Transmission Lines
Rules for Price Competitive Sales of Strategic Petroleum Reserve Petroleum
National Environmental Policy Act Implementing Procedures
Certification, Compliance, and Enforcement Regulations for Consumer Products and Commercial and Industrial Equipment
ARPA-E Reporting Requirements

DOE believes that the rules listed above are prime candidates for retrospective review. Many of them are economically or otherwise significant rulemakings with the potential to result in significant energy and economic savings, while others have the potential to improve the analyses underlying our standards rulemakings or to improve procedures that regulated entities must follow to carry on important economic activities.

DOE received comments in response to its RFI on a number of the rulemakings in its candidate list, including the energy efficiency standards for direct heating equipment. (Direct heating equipment includes decorative hearth heaters, and DOE notes that it is currently involved in litigation over its standards for these decorative heaters). DOE notes that while EPCA prohibits DOE from establishing energy conservation standards less stringent than existing standards, DOE weighs the economic and other burdens imposed by a standard against the benefits, such as energy savings and decreased life cycle costs, in establishing its energy conservation standards. DOE must establish energy standards that achieve the maximum improvement in energy efficiency that is both technologically feasible and economically justified.

DOE also received comments on its draft policy for adopting full-fuel-cycle analysis in DOE standards rulemakings, requesting a phased-in approach to use of any final policy. DOE will consider and respond to these comments as part of its retrospective review of these actions, which DOE emphasizes will be a significant undertaking in which DOE thoroughly reviews the comments received and all other available data in deciding on the best approach.

In response to the comments on direct heating equipment, distribution transformers and the full fuel cycle policy, DOE is still considering the public comments received. The standards rules are both economically significant and the policy undergirds all of DOE's standards rulemakings. As a result, more time is needed to develop the appropriate response.

DOE will also consider removing from the Unified Agenda of Regulatory and Deregulatory Actions its entry for a rulemaking on Radiation Protection of the Public and the Environment. DOE intended to conduct this rulemaking for consistency with revised EPA guidance, first issued by the Federal Radiation Council in 1960, but EPA's schedule for revising this guidance is indeterminate. DOE will continue to rely on existing guidance to ensure the appropriate protection of the public.

Department of Energy Plan: Components of Retrospective Cost-Benefit Analysis

After DOE implements its regulations, DOE uses relevant metrics to evaluate those regulations, including net benefits or cost effectiveness ratios where appropriate. As stated above, DOE intends to consider rules for retrospective review on an as-needed basis, because public comment and DOE's own internal review can indicate that a rule is in need of an update at any time. As stated above, EPCA also mandates that DOE, "not later than 6 years after issuance of any final rule establishing or amending an energy efficiency standard…publish (A) a notice of the determination of the Secretary that standards for the product do not need to be amended… or (B) a notice of proposed rulemaking including new proposed standards" based on certain criteria enumerated in the statute. EPCA also requires DOE to "[a]t least once every 7 years…review test procedures for all covered products and (i) amend test procedures with respect to any covered product, if the test procedure would more accurately or fully comply with [EPCA]; or (ii) publish notice in the Federal Register of any determination not to amend a test procedure."

The criteria set forth in EPCA (i.e., economic impacts on manufacturers and consumers, savings in operating costs and price increases, energy savings, and other relevant factors) are important metrics for evaluating DOE energy conservation standards. In fact, DOE's regulatory program under EPCA has generated a significant amount of data that DOE uses to conduct retrospective analyses in determining whether to amend its energy conservation standards.

DOE's Energy Information Administration also provides useful information for DOE analyses, including Residential Energy Consumption data and Annual Energy Outlook projections used in support of DOE's energy conservation standards. Additionally, DOE solicits comments and information from the public to inform its determinations whether to amend energy conservation standards or other significant rulemakings. For example, DOE recently published a Notice of Data Availability (76 FR 9696, Feb. 22, 2011) seeking public comment on potential technical improvements to its energy conservation standards rulemaking analysis. DOE is considering the comments received on the notice as it conducts supporting analyses for the development of standards and amendments to standards for covered products.

DOE received a number of comments in response to its RFI including varying the timeframe for analysis of its standards rulemakings, the consideration of consumer credit rates as opposed to

the 3% and 7% discount rates currently used by DOE in accordance with existing OMB guidance. DOE will consider these comments as part of its retrospective review process.

Department of Energy Plan: Online Publication and Agency Contacts

DOE will publish its retrospective review plan and available data on its Open Government website, http://www.gc.energy.gov/index.htm (Open Government) and update them as necessary. DOE will inform the public that the plan is available online and will also inform the public of any updates to the plan.

DOE has designated Daniel Cohen, Assistant General Counsel for Legislation, Regulation and Energy Efficiency, as the official contact for matters related to retrospective review. Mr. Cohen can be reached at: Daniel.Cohen@hq.doe.gov. Internal DOE review, as well as input from stakeholders and Federal agencies, will ensure that DOE's retrospective team and process maintains sufficient independence from the offices responsible for writing and implementing regulations and that DOE's plan for retrospective review complies with OMB and DOE requirements for peer review at http://cio.energy.gov/documents/OMB_Final_Info_Quality_Bulletin_for_peer_bulletin(2).pdf and http://cio.energy.gov/documents/finalinfoqualityguidelines.pdf, respectively. DOE may also consider additional ways to strengthen internal review expertise.