

**DEPARTMENT OF ENERGY****10 CFR Chapters II, III, and X****Notice of Availability of Preliminary Plan for Retrospective Analysis of Existing Rules**

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

**ACTION:** Notice of availability; request for comment.

**SUMMARY:** Through this notice, the Department of Energy (DOE) announces the availability of its preliminary plan for retrospective analysis of existing rules to make the agency's regulatory program more effective and less burdensome in achieving its regulatory objectives. As part of its implementation of Executive Order 13563, "Improving Regulation and Regulatory Review," issued by the President on January 18, 2011, DOE sought public comments on whether any of its existing regulations should be modified, streamlined, expanded, or repealed. DOE has considered these comments in the development of its preliminary plan.

**DATES:** DOE will accept comments, data, and information regarding its EO 13563 Preliminary Plan received no later than August 1, 2011.

**ADDRESSES:** Interested persons are encouraged to submit comments, identified by "EO 13563 Preliminary Plan," by any of the following methods:

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

*E-mail:* [Regulatory.Review@hq.doe.gov](mailto:Regulatory.Review@hq.doe.gov). Include "EO 13563 Preliminary Plan" 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.

Copies of the final plan and comments received are available for public inspection at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Public inspection can be conducted between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The preliminary plan and public comments can also be accessed online at <http://www.gc.energy.gov/1705.htm> and at [http://www.regulations.gov/exchange/sites/default/files/doc\\_files/Department%20of%20Energy\\_05\\_18\\_2011.pdf](http://www.regulations.gov/exchange/sites/default/files/doc_files/Department%20of%20Energy_05_18_2011.pdf).

**FOR FURTHER INFORMATION CONTACT:** Daniel Cohen, 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. *E-mail:* [Regulatory.Review@hq.doe.gov](mailto: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. Additionally, the Executive Order directs agencies to consider how best to promote retrospective analyses of existing rules. DOE's preliminary plan was issued on April 29, 2011, and posted for public review at [http://www.regulations.gov/exchange/sites/default/files/doc\\_files/Department%20of%20Energy\\_05\\_18\\_2011.pdf](http://www.regulations.gov/exchange/sites/default/files/doc_files/Department%20of%20Energy_05_18_2011.pdf). DOE now seeks additional comments on its preliminary plan so that it can consider and incorporate further public input in its final plan and ongoing retrospective review process.

In developing its preliminary plan, DOE issued a Request for Information (RFI) seeking public comment on how best to review its existing regulations and to identify whether any of its existing regulations should be modified, streamlined, expanded, or repealed. (76 FR 6123, Feb. 3, 2011) In addition, DOE sought reply comments on the suggestions received in response to the RFI to foster a public dialogue on its retrospective review processes.

DOE received numerous detailed comments in response to its RFI and request for reply comments. These comments, available at <http://www.gc.energy.gov/1705.htm> and summarized below, have informed DOE's development of its preliminary plan and its early regulatory review efforts pursuant to Executive Order 13563. The results of these initial efforts are also described below and in the preliminary plan. DOE is committed to continuing these efforts and to maintaining a consistent culture of retrospective review and analysis of its regulations. As specified in the preliminary plan, 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. Because public input plays a significant role in the retrospective review of DOE regulations, DOE also intends to seek public comment on a regular basis as part of this review process.

**Comments Received**

DOE received seven comments on current DOE certification, compliance, and enforcement rules. Commenters encouraged DOE to allow for voluntary independent certification programs (VICPs) as a way to reduce regulatory burdens (A.O. Smith Corporation, 2; Association of Home Appliance Manufacturers (AHAM), 6; Zero Zone Inc.) or to allow manufacturers to do in-house testing (Zero Zone Inc.). One commenter suggested DOE use the Air-Conditioning Heating and Refrigeration Institute (AHRI) VICP as a model. (Hussmann Corporation, 4). DOE received three comments that the March 2011 final rule on certification, compliance, and enforcement is increasing manufacturer costs and burdens of compliance, including concern about the number of base models required for testing. (A.O. Smith Corporation, 1-2; AHRI, 3; Ingersoll Rand, 1; Zero Zone Inc.). In addition, one comment encouraged DOE to move forward with verification testing and lab accreditation rulemakings (Appliance Standards Awareness Project (ASAP), 3). Another urged DOE to leverage third party verification programs that utilize independent testing laboratories and are developed by industry trade associations in these rulemakings. (AHAM, 6)

DOE received eight comments on the collection of information the commenters believed to be unnecessary or ineffectively used. Related to appliance efficiency standards rulemakings, two comments expressed concern that the discount rate used by DOE for residential and commercial consumers was too low. (Edison Electric Institute (EEI), 5-6; Ingersoll Rand, 2). Another comment suggested that the payback period used by DOE to calculate consumer savings is overly long and does not consider the impact of regulatory changes on the employees of manufacturers and their families. (Ingersoll Rand, 2). In other DOE program areas, two comments expressed concern that certain DOE programs collect information unrelated to and unnecessary for achieving their objectives. (AHRI, 2; Massachusetts Institute of Technology (MIT), 1-2). Another comment encouraged DOE to streamline its reporting databases to improve efficiency and reduce maintenance costs. (Honeywell FM&T, 4). In addition, two commenters encouraged DOE to review the terms and conditions of its federal research agreements. (Council on Governmental Relations (COGR), 3; MIT, 1-2).

Three comments addressed consensus standards. One comment encouraged DOE to develop a formal process for reviewing consensus standards for test procedures as they are developed. (AHRI, 2). Two others encouraged the use of consensus standards developed by interested parties and setting forth energy conservation standards for covered products and commercial equipment, as a way for DOE to meet its energy savings goals while leveraging commercial mechanisms and expertise. (ASAP, 2; AHAM, 2).

One commenter encouraged DOE to develop and publish a timeline for its approval process of import and export authorization of fossil energy to improve certainty. (Cheniere, Inc., 5). The commenter also suggested that intervenors in import and export authorization request proceedings should have to show changed circumstances to reduce uncertainty and delays in these proceedings. (Cheniere, Inc., 4). Another commenter encouraged DOE to limit its use of interpretive rules. (National Association of Home Builders (NAHB), 25–27).

Two commenters addressed using curves in DOE analysis, including learning curves for costs of production and experience curves for equipment price. (ASAP, 3; California Investor Owned Utilities (CAIOU), 4–5).

Two commenters provided suggestions on how to maximize net benefits, including considering factors other than direct economic impact on purchasers when developing standards and balancing competing considerations. (ASAP, 1–2; Ingersoll Rand, 2).

DOE received numerous comments concerning energy conservation standards that the commenters asserted failed to justify the imposed costs or are overly burdensome. Two comments were concerned that the energy conservation standards for residential storage water heaters over 55 gallons will be overly burdensome on consumers and manufacturers. (American Gas Association (AGA), 2; EEI, 2). Two comments addressed energy conservation standards for refrigeration equipment: one commenter suggested the life cycle costs for residential equipment under the new standard will be too high for most consumers (EEI, 4, 7) and another commenter suggested the testing process for commercial equipment could be streamlined and simplified through computer modeling. (Hussmann Corporation, 2). Eight commenters addressed energy conservation standards for direct heating equipment (DHE) as applied to decorative hearth

products. (AHRI, 1–2; AGA, 4; Empire Comfort Systems, 1–2; Hearth and Home Technologies, 1–2; Hearth, Patio & Barbecue Association (HPBA), 1–2; Lennox Hearth Products; NAHB, 35; National Propane Gas Association (NPGA), 1–2). DOE notes that it is currently involved in litigation over its standards for decorative hearth heaters. Any retrospective review of these regulations will depend upon the outcome of this litigation. Additionally, one comment suggested that DOE should set appliance energy conservation standards, but allow states to set building standards for new construction, while another encouraged DOE to focus its building programs on existing buildings. (CAIOU, 2–3; NAHB, 31) Another comment suggested DOE reevaluate its performance standards for products assembled on site. (CAIOU, 2).

Three commenters addressed the process by which guidance is communicated. One comment encouraged DOE to streamline the guidance given to stakeholders on products covered by energy conservation standards and test procedures used to measure compliance with those standards. (AHAM, 6–7). Another suggested streamlining of exceptions or additions to DOE orders. (Honeywell FM&T, 4–5). Another comment stressed the importance of transparency in calculating economic and technological justifications. (NAHB, 6, 27).

DOE received six comments regarding coordination and harmonization with agencies, state governments, and industry. Four comments stressed the importance of coordination with other agencies in relevant program areas, such as the Environmental Protection Agency's ENERGY STAR Program, the Federal Trade Commission, and U.S. Customs and Border Protection for the implementation and enforcement of its appliance efficiency program. (A.O. Smith Corporation, 1; AHAM, 6; AHRI, 2; ASAP, 3; Hussmann Corporation, 2–3). Two comments addressed the importance of coordination with industry and other stakeholders to reduce burden. (A.O. Smith Corporation, 1; AHAM, 6). Another comment encouraged DOE to publish its final test procedure for battery charging systems because of its interaction with the proposed standards for these products being considered in California. (AHAM, 4). This commenter also urged DOE to consider industry burden in developing its test procedure for clothes washers (AHAM, 5–6).

DOE received comments on regulations that the commenters claimed are outdated, working well, or

not operating as well as expected. One commenter praised the 1996 Process Improvement Rule and encouraged DOE to continue following those procedures rather than the updated procedures set out by DOE in November 2010 and available at [http://www1.eere.energy.gov/buildings/appliance\\_standards/pdfs/changes\\_standards\\_process.pdf](http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/changes_standards_process.pdf). (EEI, 2, 13–14). Another comment encouraged the continued use of contract H Clauses. (Honeywell FM&T, 5). One comment suggested that DOE update its site specific reporting requirements to reflect policy changes. (Honeywell FM&T, 3). Another comment encouraged DOE to modernize its approach to National Environmental Policy Act (NEPA) rulemaking. (Alton Strategic Environmental Group, 3–9). One comment suggested that certain construction subcontractor regulations were cumbersome. (Honeywell FM&T, 3). Additionally, another encouraged DOE to restructure its state preemption waiver conditions. (CAIOU, 3).

DOE received numerous comments about how to structure a retrospective analysis. Four commenters stressed the need for transparency in retrospective analysis. (CAIOU, 1; Honeywell FM&T, 2; Ingersoll Rand, 2–3; Institute for Policy Integrity, NYU School of Law, 9). Five commenters encouraged DOE to consider the real world impact of regulations over relying on modeling and assumptions. (ASAP, 1; EEI, 12–13; Ingersoll Rand, 2; Institute for Policy Integrity, NYU School of Law, 7–8; NAHB, 13–14). Four commenters also encouraged DOE to do an initial review of existing regulations to prioritize regulations for which revision will have the biggest impact. (AGA, 5–6; AHAM, 5; Institute for Policy Integrity, NYU School of Law, 5–6; NAHB, 16–19). Another comment encouraged DOE to revisit previous decisions denying petitions for regulation to see if regulation may now be warranted. (Institute for Policy Integrity, NYU School of Law, 3). One comment suggested DOE publish a monthly schedule on current rulemaking. (CAIOU, 4).

DOE received comments on information and data about the costs, burdens, and benefits of existing regulations. One commenter encouraged DOE to evaluate the value of continuous efficiency improvement in industry. (Honeywell FM&T, 5). Another commenter encouraged DOE to evaluate its cost sharing and contracts programs. (COGR, 4–5). One commenter also encouraged DOE to revise its consideration of climate variations for energy conservation standards, which can affect payback. (CAIOU, 4). Two

commenters addressed the full-fuel-cycle analysis of energy consumption. (AGA, 5; EEI, 4–5, 7).

DOE received comments on unnecessarily complicated regulations, reporting requirements, or regulatory processes other than the certification reporting requirements discussed previously. Three commenters suggested DOE streamline and simplify its various reporting requirements. (COGR, 3; Honeywell FM&T, 4; MIT, 2).

#### Early Retrospective Review Results

Although DOE's implementation of Executive Order 13563 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 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. DOE 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.

#### Request for Further Public Input

DOE seeks input on its preliminary retrospective review plan, which sets forth its intended process for regulatory review pursuant to Executive Order 13563. The preliminary plan and comments received to date are available at <http://www.gc.energy.gov/1705.htm>. DOE welcomes further comments submitted by August 1, 2011. See the **ADDRESSES** section for further information on how to submit comments.

Issued in Washington, DC, on June 30, 2011.

**Sean A. Lev,**

*Acting General Counsel.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 139

[Docket No. FAA-2010-0247; Notice No. 11-01]

RIN 2120-AJ70

#### Safety Enhancements Part 139, Certification of Airports; Reopening of Comment Period

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM); Reopening of comment period.

**SUMMARY:** This action reopens the comment period for an NPRM that was published on February 1, 2011. In that document, the FAA proposed several safety enhancements for airports. Recently, regulations.gov had a software upgrade which resulted in documents previously submitted to the docket that were not accessible as a result of the upgrade. This action reopens the comment period to allow the public additional time to review the initial regulatory evaluation.

**DATES:** The comment period for the NPRM published on February 1, 2011 (76 FR 5510) and reopened (76 FR 20570) April 13, 2011, is reopened again until July 26, 2011.

**ADDRESSES:** You may send comments identified by docket number FAA-2010-0247 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202-493-2251.

*Privacy:* The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the