

provisions for consumer products apply “to the same extent and in the same manner” for covered commercial and industrial equipment). As with consumer products, the Department has promulgated certification and compliance regulations for certain equipment, including motors and transformers. See 10 CFR part 431, subparts B, K, U, and V; See, e.g., 10 CFR 431.385(b) (“If a basic model [of electric motor] is not properly certified in accordance with the requirements of this subpart, the Secretary may seek, among other remedies, injunctive action to prohibit distribution in commerce of such basic model.”)¹ The Department interprets its certification regulations governing covered commercial and industrial equipment in the same way as its regulations governing consumer products. For the reasons set forth above, the failure to certify a covered piece of commercial or industrial equipment in accordance with DOE rules may be subject to enforcement action, including the imposition of civil penalties.

Today, the Department also announces its intent to exercise its enforcement authority more rigorously in the future. In order for DOE’s efficiency standards to effectively promote the development and distribution of energy efficient products that will save energy and reduce costs for millions of Americans, DOE must ensure that these standards are aggressively and consistently enforced. Proper certification is a necessary prerequisite to achieving these goals. This fall, therefore, DOE will begin this effort by initiating a compliance review of certification reports for consumer products and commercial equipment covered by DOE regulations. Pursuant to its existing enforcement authority, the Department intends to randomly select previously filed certification reports for review, to request certification records from manufacturers as needed, and to hold manufacturers accountable for any failure to certify covered products in accordance with DOE rules.

This guidance represents the Department’s interpretation of existing regulations and announcement of the agency’s general policy with respect to exercising its existing enforcement authority. It is not intended to create or remove any rights or duties, nor is it

intended to affect any other aspect of EPCA or DOE regulations.

Authority: 42 U.S.C. 6299–6305; 6316.

Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice.

Issued in Washington, DC, on October 7, 2009.

Scott Harris,

General Counsel.

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DEPARTMENT OF ENERGY

Guidance on Ex Parte Communications

AGENCY: Office of the General Counsel, Department of Energy (DOE).

ACTION: Notice of guidance on ex parte communications.

SUMMARY: The Department of Energy sets forth guidance on ex parte communications during informal rulemaking proceedings. The guidance is intended to encourage the public to provide DOE with all information necessary to develop rules that advance the public interest, while ensuring that rulemaking proceedings are not subject to improper influence from off-the-record communications. As President Obama stated in a January 21, 2009 memorandum, “Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information.” (74 FR 4685) DOE intends this guidance to provide both increased public participation in the rulemaking process and additional transparency during that process.

DATES: This guidance on ex parte communications is effective on October 14, 2009.

FOR FURTHER INFORMATION CONTACT:

Daniel Cohen, Assistant General Counsel for Legislation and Regulatory Law, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0121, e-mail: expartecommunications@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The following guidance, provided in the form of answers to “Frequently Asked Questions”, is intended to encourage stakeholders to meet with, and provide information and advice to, DOE officials during the rulemaking process by setting forth simple and clear procedures governing meetings, or

telephone or electronic contact, with DOE officials to discuss a pending rulemaking action. Informal stakeholder communications other than written comments on the proposed rule or presentations at a public hearing that occur during the public comment period are generally lawful under section 501 of the Department of Energy Organization Act and the Administrative Procedure Act (5 U.S.C. 553). Informal communications, however, must be disclosed properly to ensure fairness for all stakeholders, the integrity of the rulemaking process, and the adequacy of the record in support of the final rule.

Frequently Asked Questions on Ex Parte Communications With DOE Employees

(1) *What is the purpose of DOE’s Ex Parte Guidance?*

The ex parte guidance governs the manner in which interested parties may communicate with DOE during its informal rulemaking proceedings, termed “permit-but-disclose” proceedings for purposes of this guidance. It is designed to encourage additional public participation in the rulemaking process, while ensuring that all such participation is open and transparent.

(2) *What types of proceedings are considered “permit-but-disclose” proceedings?*

Permit-but-disclose proceedings are comprised of: (i) Proceedings in response to petitions for rulemaking; (ii) informal rulemaking proceedings upon release of an advanced notice of proposed rulemaking, a notice of public meeting or, if neither of those documents are utilized, the notice of proposed rulemaking; (iii) proceedings involving an interim final rule.

(3) *Does the ex parte guidance apply to me?*

The ex parte guidance applies to anyone who engages in the kind of communications covered by the guidance.

(4) *What types of communications are covered by the ex parte guidance?*

The guidance governs ex parte presentations to DOE decision makers during its “permit-but-disclose” proceedings.

(5) *What is an ex parte presentation?*

An ex parte presentation is a communication directed to the merits or outcome of a proceeding that, if written (including e-mail), is not provided to all interested parties or, if oral, is made without advance notice to all interested parties and without opportunity for such parties to be present.

¹ Additionally, the Department is developing a final rule to adopt similar certification and compliance regulations for the remaining types of covered commercial and industrial equipment covered by statute. See 64 FR 69598 (December 13, 1999); 71 FR 25104 (April 28, 2006); 71 FR 42193 (July 25, 2006); 71 FR 71341–42 (December 8, 2006).

(6) *Who are DOE decision making personnel?*

Decision-making personnel are those DOE employees who are or may reasonably be expected to be involved in formulating a rulemaking.

(7) *What are the disclosure requirements applicable in "permit-but-disclose" proceedings?*

For the proceedings listed above, in-person meetings or telephone calls between DOE and an interested party or parties will require a memorandum memorializing the meeting to be placed in the public docket. The memorandum should include a summary of the issues discussed as well as a list of attendees and date of the meeting. The interested party or parties must complete the memorandum and submit it to DOE for inclusion in the public docket within one week of the meeting. The DOE reserves the right to supplement these public filings with additional information as necessary or to demand that the party making the filing do so (*i.e.*, if DOE believes that important information was omitted or characterized incorrectly).

If outside parties bring documents to give DOE employees, the employees should inform the outside parties that those documents will be put in the record. If the outside parties do not want DOE employees to put their documents in the record, they should not, except as specified in this response, provide the documents to or leave the documents with DOE. Interested parties may submit documents under a request for confidential treatment; however, a public version of these documents must be provided for the record for DOE to rely on the information as part of a rulemaking. In addition, DOE will make its own determination on whether documents should be released in response to a request for the documents under the Freedom of Information Act.

(8) *What communications are not covered by the ex parte guidance?*

Phone calls that DOE employees or contractors initiate to gather information as part of the rulemaking process need not be memorialized. If new data is obtained as a result of such contacts after issuance of the notice of proposed rulemaking, it may be necessary to seek public comment on the data for DOE to rely on the data in the final rule.

(9) *What is DOE's role in ex parte communications?*

To safeguard the integrity of DOE's rulemaking process, the primary goal of DOE employees in ex parte communications is to listen and ask clarifying questions. The DOE will not engage in negotiation or reveal substantive aspects of the forthcoming

rulemakings. The DOE is the receiver of information. If meetings are held with an outside party while the rulemaking is pending, every reasonable effort will be made to meet with any other outside party who requests a similar opportunity.

(10) *Where should memoranda memorializing ex parte communications be sent?*

Memorandums memorializing ex parte communications should be provided to the e-mail address listed above, expartecommunications@hq.doe.gov.

(11) *How does DOE give notice of ex parte communications?*

DOE is currently developing a link on the homepage of the Office of the General Counsel where ex parte communications will be posted. Further information on the Web site will be provided in a future **Federal Register** notice.

Issued in Washington, DC, on October 7, 2009.

Scott Blake Harris,
General Counsel.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC10-729-000]

Commission Information Collection Activities (FERC-729); Comment Request; Extension

October 6, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due December 15, 2009.

ADDRESSES: Comments may be filed either electronically or in paper format, and should refer to Docket No. IC10-729-000. Documents must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines at <http://www.ferc.gov/help/submission-guide.asp>.

Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. First time users will have to establish a user name and password (<http://www.ferc.gov/docs-filing/eregistration.asp>) before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments through eFiling.

Commenters filing electronically should not make a paper filing. Commenters that are not able to file electronically must send an original and two (2) copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription (at <http://www.ferc.gov/docs-filing/esubscription.asp>). In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's Web site using the "eLibrary" link and searching on Docket Number IC10-729. For user assistance, contact FERC Online Support (e-mail at ferconlinesupport@ferc.gov, or call toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659).

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by telephone at (202) 502-8663, by fax at (202) 273-0873, and by e-mail at ellen.brown@ferc.gov.

SUPPLEMENTARY INFORMATION: FERC-729 ("Electric Transmission Facilities," OMB Control No. 1902-0238) covers the reporting requirements¹ of 18 CFR part 50, and, as relates to transmission facilities, 18 CFR 380.3(c)(3), 380.5(b)(14), 380.6(a)(5), 380.15(d), and 380.16.

The purpose of these regulations is to implement the Commission's mandates under EPAct 2005 section 1221 which authorizes the Commission to issue permits under FPA section 216(b) for electric transmission facilities and the Commission's delegated responsibility to coordinate all other Federal authorizations under FPA section 216(h). The related FERC regulations

¹ These requirements were promulgated by Order 689, issued November 16, 2006, in Docket No. RM06-12, in accordance with section 1221 of the Energy Policy Act of 2005: (a) To establish filing requirements and procedures for entities seeking to construct or to modify electric transmission facilities, and (b) to coordinate the processing of Federal authorizations and the environmental review of electric transmission facilities in designated national interest electric transmission corridors. (Order 689 is available in FERC's eLibrary at http://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=4455911.)