

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### 2 CFR Chapter XXVII

### 5 CFR Chapter XXVIII

### 8 CFR Chapter V

### 21 CFR Chapter II

### 27 CFR Chapter II

### 28 CFR Chapters I, III, V and VI

### 31 CFR Chapter IX

### 40 CFR Chapter IV

### 41 CFR Chapter 128

### 45 CFR Chapter V

### 48 CFR Chapter 28

[Docket No. OLP 152]

### Periodic Review of Existing Regulations; Retrospective Review Under E.O. 13563

**AGENCY:** Department of Justice.

**ACTION:** Request for comment.

**SUMMARY:** On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," which sets forth principles and requirements designed to promote public participation, improve integration and innovation, increase flexibility, ensure scientific integrity, and increase retrospective analysis of existing rules. On August 22, 2011, pursuant to that Executive Order, the Department of Justice published its Final Plan for Retrospective Review of Existing Regulations. Then, on May 10, 2012, the President issued Executive Order 13610, "Identifying and Reducing Regulatory Burdens," which requires agencies to "invite, on a regular basis \* \* \* public suggestions about regulations in need of retrospective review and about appropriate modifications to such regulations. In

accordance with Executive Orders 13563 and 13610, and the Department's Final Plan, the Department invites interested members of the public to submit suggestions as to which Department of Justice Regulations should be modified, streamlined, expanded or repealed.

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before May 24, 2013. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

**ADDRESSES:** Comments may be mailed to OLP Regulatory Docket Clerk, Department of Justice, 950 Pennsylvania Avenue NW., Room 4250, Washington, DC 20530. To ensure proper handling, please reference OLP Docket No. OLP 152 on your correspondence. You may submit comments electronically or view an electronic version of this notice with request for comments at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, 950 Pennsylvania Avenue NW., Room 4252, Washington, DC 20530; Telephone (202) 514-8059.

#### SUPPLEMENTARY INFORMATION:

*Posting of Public Comments.* Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT**.

Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. If you do not wish personally identifying information to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted. Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online.

## Overview

On January 18, 2011, President Barack Obama 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 agencies to develop a plan "under which the agency will periodically review its existing significant regulations."

Pursuant to Executive Order 13563, the Department of Justice developed a preliminary plan for retrospective analysis in keeping with its resources, expertise, and regulatory priorities. The Department twice sought comment from regulated entities and the general public, and those previous public comments can be found online at <http://www.regulations.gov/#!docketDetail;dct=PS;rpp=25;po=0;D=DOJ-OAG-2011-0003> for Docket No. OLP 150, and at <http://www.regulations.gov/#!docketDetail;dct=PS%252BSR;rpp=25;po=0;D=DOJ-LA-2011-0016> for Docket No. DOJ-LA-2011-0016.

After careful review, the Department incorporated many of those suggestions in its preliminary and final retrospective review plans. The Department also considered and incorporated best practices from its extensive efforts already underway to review existing regulations, respond to petitions for rulemaking, modernize technologies, and engage the public. The Department published its Final Plan for Retrospective Review of Existing Regulations on August 22, 2011, which is available online at <http://www.justice.gov/open/doj-rr-final-plan.pdf>.

The Final Plan identified several regulations for an initial round of retrospective review, and indicated that the Department expected to identify additional regulations for retrospective review in the future. As part of its execution of this plan, the Department is again seeking public comment on which regulations should be prioritized for retrospective review.

## Background

Executive Order 13563 calls for "periodic review of existing significant regulations," with close reference to empirical evidence. Additionally,

Executive Order 13610 calls for regular participation of members of the public, including those directly and indirectly affected by regulations, as well as State, local, and tribal governments. Although the Department of Justice is primarily a law-enforcement agency, not a regulatory agency, some of its components have regulatory programs related to their responsibilities, and the Department is committed to the ongoing process of reviewing its existing regulations. Consistent with that commitment, the Department continues to assess its existing significant regulations in accordance with the requirements of the Executive Order through the implementation of its plan for retrospective review. As part of its Final Plan for Retrospective Review of Existing Regulations, the Department established a Department-wide working group to collaborate with rulemaking components to select rules for review, seek public comment, and recommend revisions as necessary.

Since publishing the final plan, the working group met and discussed the principles underlying Executive Order 13563 and the Departmental process for retrospective review. The working group heard presentations from the relevant components whose regulations had been selected for initial review in the Final Plan. After collaboration between the relevant components and the working group, the Department prepared rulemaking documents seeking public comment on particular rules identified for initial review.

Pursuant to the Final Plan, the Department continues to identify rules internally and seek suggestions from Department components regarding which rules should be prioritized in the retrospective review process. In addition, the Final Plan also calls for periodic solicitation of suggestions from the public. As part of this ongoing process, the Department is presently seeking public input as to which rules should be prioritized under the criteria identified in the Final Plan and reproduced below.

#### Request for Comments

The Department of Justice recognizes that valuable information as to the consequences of a rule, including its costs and benefits, comes from practical real-world experience (both on the part of the public and on the part of the Department) after the rule has been implemented. Consistent with the Department's commitment to public participation, the Department is seeking views from the public that identify specific rules or obligations that should be prioritized for review, including

candidates for modification, streamlining, expansion or repeal. Comments should specifically describe how existing rules may be outmoded, ineffective, insufficient, or excessively burdensome.

The Department's internal working group, formed pursuant to its Final Plan for Retrospective Review of Existing Regulations, will evaluate suggestions of candidate rules. The Department has identified criteria that will guide the working group in prioritizing rules for retrospective review. The most important candidate rules for review are those that:

- Could result in greater net benefits to the public if modified; or
- Could be replaced by other, less burdensome regulatory alternatives without compromising regulatory objectives.

In identifying rules that may meet those criteria, the Department will focus on rules that:

- Have been overtaken by new circumstances or technologies; or
- Require outdated reporting practices, such as paper-based processes without an electronic alternative; or
- Have been in place for long periods of time without revision so that updating may be appropriate; or
- Overlap, duplicate, or conflict with other federal rules or with State and local rules; or
- Have been the subject of petitions for rulemaking suggesting ways to enhance net benefits or improve the efficacy of regulatory programs.

Finally, in selecting rules for review, the Department will prioritize rules that meet these criteria and:

- Impose high costs or burdens on the public; or
- Affect a large number of entities or have disproportionate distributional impacts on certain entities, such as small businesses.

In addition to the above criteria, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, the Department will consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

The Department of Justice is soliciting concrete reasons why particular rules should be prioritized according to the above criteria in its ongoing retrospective review of existing rules. Comments should focus on regulations that have demonstrated deficiencies and clearly reflect the criteria set forth above. Comments that reiterate previously submitted arguments relating to recently issued rules will be less useful. Furthermore, commenters are encouraged to focus on regulatory

changes that will achieve a broad public impact, rather than an individual personal or corporate benefit. Comments should reference a specific regulation by the Code of Federal Regulations (CFR) cite, and provide specific information on what needs fixing and why. Lastly, the Department stresses that this review is for published final rules; the public should not use this process to submit comments on proposed rules.

The most useful comments will identify which specific regulations need to be changed, strengthened or clarified, or revoked. It will be most helpful to explain why the particular suggested change or revocation is necessary or desired, and to provide specific ways to improve the regulation, particularly any specific language modifications.

As part of its ongoing retrospective analysis, the Department's working group will again review the comments and suggestions previously submitted in response to the initial Requests for Comment in 2011, and it will consider whether to prioritize any regulations that had previously been the subject of public comments in the next round of retrospective analysis under Executive Order 13563. Thus, it is unnecessary for commenters to resubmit or reiterate previously-filed comments. Comments addressing more recent developments or offering a different or more thorough analysis relating to regulations that had previously been the subject of public comment for retrospective review would be welcome.

The Department notes that this Request for Comment is issued solely for information and program-planning purposes. The Department will give careful consideration to the responses, and may use them as appropriate during the retrospective review, but we do not anticipate providing a point-by-point response to each comment submitted. While responses to this Request for Comment do not bind the Department to any further actions related to the response, all submissions will be made publicly available on <http://www.regulations.gov>.

Dated: March 19, 2013.

**Elana Tyrangiel,**

*Acting Assistant Attorney General, Office of Legal Policy.*

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