

# 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 150]

### Reducing Regulatory Burden; Retrospective Review Under E.O. 13563

**AGENCY:** Department of Justice.

**ACTION:** Request for information.

**SUMMARY:** As part of its implementation of Executive Order 13563, "Improving Regulation and Regulatory Review," issued by the President on January 18, 2011, the Department of Justice (the Department) is seeking comments and information from interested parties to assist it in reviewing its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. The purpose of Justice's review is to make the agency's regulatory program more effective and less burdensome in achieving its regulatory objectives.

*Comment Date:* Written comments must be postmarked and electronic comments must be submitted on or before March 31, 2011. 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. 150 on your correspondence. You may submit comments electronically or view an electronic version of this final rule 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>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

The Department understands that the public comment period set forth in this Notice is shorter than the 60-day comment period normally given for proposed rules. However, in this notice (which is not, of course, a proposed rule), the Department is not asking for detailed, lengthy comments on its regulations, but only on matters pertaining to the retrospective review plan which it currently has under development. Further opportunities will be given for public comment on those regulations that the Department identifies for retrospective review.

**Overview**

The Department of Justice is not a major regulatory agency. Although the number and economic impact of the Department's regulations may be less than that of some of our sister Federal agencies, the Department is nonetheless committed to reviewing its existing

regulations as described more fully below.

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. To that end, the Executive Order requires, among other things, that:

- Agencies propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; and that agencies tailor regulations to impose the least burden on society, consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; and that agencies 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).

- The regulatory process encourages public participation and an open exchange of views, with an opportunity for the public to comment.

- Agencies coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for businesses and the public.

- Agencies consider lower-cost approaches that reduce burdens and maintain flexibility.

- Regulations be guided by objective scientific evidence.

Additionally, the Executive Order directs agencies to consider how best to promote retrospective analyses of existing rules. Specifically, agencies must develop a preliminary plan under which the agency will periodically review existing regulations to determine which should be maintained, modified, strengthened, or repealed to increase the effectiveness and decrease the burdens of the agency's regulatory program.

To implement the Executive Order, the Department is taking several immediate steps to launch its retrospective review of existing regulatory requirements. As described further below, the Department is issuing this 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. We will also be working with the Department's rulemaking components on a preliminary plan for the periodic review of its existing regulations, including ways to institutionalize, within the Department, the ongoing review of the Department's regulations, in an open dialog with the public. Through this process, the Department will consider the elimination of rules that are no longer warranted, and will also consider strengthening, complementing, or modernizing rules where necessary or appropriate—including, as appropriate, undertaking new rulemaking actions.

Consistent with the Department's commitment to public participation in the rulemaking process, the Department is beginning this process by soliciting views from the public on how best to conduct its analysis of existing Justice rules and how best to identify those rules that might be modified, streamlined, expanded, or repealed. It is also seeking views from the public on specific rules or obligations that should be altered or eliminated. While the Department promulgates rules in accordance with the law and to the best of its ability, we recognize that the best 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. Members of the public and of entities affected by Department's regulations are likely to have useful information and perspectives on the benefits and burdens of existing requirements beyond the information that was available to the Department at the time a regulation was issued. Interested parties may also be well-positioned to identify those rules that are most in need of review and, thus, assist the Department in prioritizing and properly tailoring its retrospective review process. In short, engaging the public in an open, transparent process is a crucial first step in the Department's review of its existing regulations.

#### Questions for Commenters

The following list of questions represents a preliminary attempt to identify issues raised by the Department's efforts to develop a preliminary plan for the retrospective analysis of its regulations and to identify rules/obligations on which it should immediately focus. This nonexhaustive list is meant to assist in

the formulation of comments and is not intended to restrict the issues that may be addressed. In addressing these questions or others, we request that commenters identify with specificity the regulation or reporting requirement at issue, providing the legal citation and providing where possible empirical information on the impact of the rule on those subject to it. We also request that the submitter explain, in as much detail as possible, why a regulation or reporting requirement should be modified, streamlined, expanded, or repealed, as well as suggest specific alternative means for the Department to better achieve the statutory or regulatory objectives.

(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?

(2) What factors should the agency consider in selecting and prioritizing rules for review?

(3) Are there regulations that have become ineffective or been overtaken by technological or other change and, if so, what are they? How can they be modernized to accomplish the statutory or regulatory objectives better?

(4) Are there rules that can simply be revoked without impairing the Department's statutory obligations and policy objectives and, if so, what are they?

(5) Are there rules that are still necessary, but have not operated as well as expected such that a modified, stronger, or different approach is justified?

(6) How can the Department best obtain and consider accurate, objective information and data about the costs, burdens, and benefits of existing regulations consistent with the Paperwork Reduction Act and without imposing information collection burdens on the public? 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 Department notes that this Request for Information 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 RFI do not bind

the Department to any further actions related to the response, all submissions will be made publically available on <http://www.regulations.gov>.

Dated: February 22, 2011.

**Christopher H. Schroeder**,  
Assistant Attorney General, Office of Legal Policy.

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 703, 704, 709, and 742

RIN 3133-AD86

#### Removing References to Credit Ratings in Regulations; Proposing Alternatives to the Use of Credit Ratings

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** NCUA is proposing rules to implement certain statutory provisions in Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). The proposed rules replace or remove references to credit ratings in NCUA regulations.

**DATES:** Comments must be received on or before May 2, 2011.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

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

*NCUA Web site:* <http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx>. Follow the instructions for submitting comments.

*E-mail:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on ‘Notice of Proposed Rulemaking—Removing References to Credit Ratings’ in the e-mail subject line.

*Fax:* (703) 518-6319. Use the subject line described above for e-mail.

*Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

*Hand Delivery/Courier:* Same as mail address.

*Public Inspection:* All public comments are available on the agency's Web site at <http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx> as submitted, except as may not be possible for