

responsibilities and conduct contained in 5 CFR part 735.

**§ 10201.102 Prior approval for outside employment or activity.**

(a) *General requirement.* Before engaging in any outside employment or activity, whether or not for compensation, an OSC employee must obtain written approval from the Designated Agency Ethics Official (DAEO) or the Alternate Designated Agency Ethics Official (ADAEO), except to the extent that OSC has issued an internal instruction pursuant to paragraph (d) of this section exempting certain employment or activities from this requirement.

*Note 1 to paragraph (a).* 18 U.S.C. 203(d) and 205(e) require special approval for certain representational activities in claims against the Federal Government and other matters affecting the interests of the government.

(b) *Definition of “outside employment or activity”.* For purposes of this section, “outside employment or activity” means any form of non-Federal employment or business relationship involving the provision of services by the employee, whether for compensation or not for compensation. It includes, but is not limited to, serving as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, or teacher. The definition does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization unless such activities involve the provision of professional services or advice, or are for compensation other than reimbursement of expenses.

*Note 2 to paragraph (b).* Employees who wish to engage in compensated speaking or writing in a personal capacity are subject to, among other things, the provisions of 5 CFR 2635.703 (concerning use of nonpublic information) and 5 CFR 2635.807 (concerning receipt of compensation for teaching, speaking, and writing related to one’s duties), and are encouraged to seek guidance from an agency ethics official before engaging in such activities. Certain covered non-career employees are also subject to further restrictions on receipt of outside compensation pursuant to section 502 of the Ethics in Government Act (5 U.S.C. app.). In addition, OSC attorneys should consult their applicable state bar rules of professional conduct.

(c) *Standard for approval.* Approval shall be granted by the DAEO or ADAEO upon a determination that the

outside employment or activity is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(d) *Implementation guidance.* The DAEO or ADAEO may issue internal instructions governing the submission of requests for approval of outside employment or activity. The instructions may exempt categories of employment or activities from the prior approval requirement of this section based on a determination that those categories generally would be approved and are not likely to involve prohibited conduct or create an appearance of lack of impartiality.

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## DEPARTMENT OF ENERGY

### 10 CFR Part 1061

RIN 1990–AA50

#### Procedures for the Issuance of Guidance Documents

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

**ACTION:** Final rule; withdrawal.

**SUMMARY:** In accordance with an Executive Order issued by the President on January 20, 2021, and for the reasons explained in the preamble of this final rule, the Department of Energy (DOE or “the Department”) withdraws the Department’s final rule on guidance implementing the Executive Order “Promoting the Rule of Law Through Improved Agency Guidance Documents.”

**DATES:** As of June 4, 2021, the final rule published January 6, 2021 at 86 FR 451, effective February 5, 2021, delayed February 2, 2021, until March 21, 2021, at 86 FR 7799, and delayed March 19, 2021, until June 17, 2021, at 86 FR 14807, is withdrawn.

**ADDRESSES:** The docket for this rulemaking, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at <https://www.regulations.gov>. All documents in the docket are listed in the <https://www.regulations.gov> index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at <https://www.regulations.gov/> associated with RIN 1990–AA50. The docket web page contains simple instructions on how to access all documents, including

public comments, in the docket. See the section on Public Participation for information on how to submit comments through <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–33, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–2555, Email: [Guidance@hq.doe.gov](mailto:Guidance@hq.doe.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On July 1, 2020, DOE published a notice of proposed rulemaking (NPR) in which DOE proposed a new part 1061 in title 10 of the Code of Federal Regulations to implement the requirements of Executive Order 13891, “Promoting the Rule of Law Through Improved Agency Guidance Documents” (84 FR 55235).<sup>1</sup> (85 FR 39495) After considering comments from stakeholders on the NPR, DOE published a final rule, on January 6, 2021, establishing new 10 CFR part 1061. (86 FR 451) As required by Executive Order 13891, part 1061 contained internal DOE requirements for the contents of guidance documents, procedures for providing notice of, and soliciting public comment on, certain guidance documents, and procedures for the public to petition for the issuance, withdrawal or revision of guidance documents.

On January 20, 2021, the President issued Executive Order 13992, “Revocation of Certain Executive Orders Concerning Federal Regulation” (86 FR 7049), which, among other things, revoked Executive Order 13891 and directed agencies to promptly take steps to rescind any orders, rules, regulations, guidelines, or policies, or portions thereof, implementing or enforcing the Executive Order 13891. Executive Order 13992 states that it is the policy of the Administration to use available tools to confront the urgent challenges facing the Nation, including the coronavirus disease 2019 (COVID–19) pandemic, economic recovery, racial justice, and climate change. To tackle these challenges effectively, executive departments and agencies must be equipped with the flexibility to use robust regulatory action to address national priorities.

<sup>1</sup> In the NPR, DOE also responded to a petition for rulemaking submitted by the New Civil Liberties Alliance (NCLA) asking DOE to initiate a rulemaking to prohibit any DOE component from issuing, relying on, or defending improper agency guidance. DOE granted the petition in part and denied it in part. (85 FR 39497)

Previously, DOE postponed the effective date of part 1061 until March 21, 2021. (86 FR 7799) DOE sought comment on further delay of the effective date, including the impacts of such delay, as well as comment on the legal, factual, or policy issues raised by the rule. DOE did not receive comments on these issues. Accordingly, DOE further extended the effective date to June 17, 2021. (86 FR 14807)

On March 26, 2021, DOE published a NPR in which DOE proposed to withdraw part 1061 (“March 2021 NPR”). (86 FR 16114) In the March 2021 NPR DOE tentatively concluded that part 1061 will hinder DOE in providing timely guidance in furtherance of DOE’s statutory duties. The March 2021 NPR stated that part 1061 will in particular hinder DOE’s ability to address the economic recovery and climate change challenges enumerated in Executive Order 13992. As discussed in the Executive Order, agencies must have flexibility to timely and effectively address these challenges. The procedures of part 1061 are not required by the Administrative Procedure Act (“APA”) (5 U.S.C. 551 *et seq.*), and they limit the regulatory tools available to DOE to address the challenges such as those listed in Executive Order 13992. DOE concluded that part 1061 deprives DOE of flexibility in determining when and how best to issue guidance based on particular facts and circumstances, and restricts DOE’s ability to provide timely guidance on which the public can confidently rely.

Moreover, the March 2021 NPR stated that DOE’s stated purpose in issuing part 1061 was to promote transparency and public involvement in the development and amendment of DOE guidance documents. DOE noted, however, that its procedures for public transparency and involvement in the development of agency guidance documents will remain unchanged by withdrawal of part 1061. More specifically, DOE guidance documents will continue to be available on DOE’s website and DOE will also continue its practice, as appropriate, of soliciting stakeholder input on guidance documents of significant stakeholder and public interest.

## II. Discussion

After consideration and review, DOE has concluded that part 1061 will hinder DOE in providing timely guidance in furtherance of DOE’s statutory duties, and therefore, DOE is withdrawing part 1061. As stated in the March 2021 NPR, part 1061 will hinder DOE’s ability to address the

economic recovery and climate change challenges enumerated in Executive Order 13992, and other important issues. The procedures of part 1061 are not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), and they limit the regulatory tools available to DOE to address the challenges listed in Executive Order 13992. Part 1061 deprives DOE of flexibility in determining when and how best to issue guidance based on particular facts and circumstances, and restricts DOE’s ability to provide timely guidance on which the public can confidently rely.

As stated in the March 2021 NPR, DOE intends to continue its practices for public transparency and involvement in the development of agency guidance documents despite the withdrawal. DOE guidance documents will continue to be available on DOE’s website. DOE will also continue its practice, as appropriate, of soliciting stakeholder input on guidance documents of significant stakeholder and public interest. Additionally, stakeholders may still petition DOE at any time to issue, withdraw or revise DOE guidance documents, or inquire about DOE guidance documents, by emailing petitions or inquiries to [Guidance@hq.doe.gov](mailto:Guidance@hq.doe.gov). The benefits of binding DOE to the procedures of part 1061 therefore are outweighed by the need for DOE to have the ability to issue guidance timely and effectively to address challenges including those listed in the Executive Order. Moreover, DOE notes that guidance, whether issued under part 1061 or otherwise, is non-binding, and does not have the force and effect of law.

### *Summary of Comments and DOE Responses*

DOE received five comments on the March 2021 NPR proposal to withdraw part 1061. These comments and DOE’s responses are summarized in the following section.

#### *Joint Comments of AHRI, AHAM, and NEMA*

DOE received comments jointly submitted by the Air-Conditioning, Heating, & Refrigeration Institute (AHRI), Association of Home Appliance Manufacturers (AHAM), and the National Electrical Manufacturers Association (NEMA) (collectively, the “Joint Commenters”).<sup>2</sup> The Joint Commenters noted their experience with DOE guidance documents, specifically through DOE’s Office of

Energy Efficiency and Renewable Energy (EERE), and that EERE has consistently demonstrated an interest in making guidance documents easy to locate and available to the public. The Joint Commenters stated that EERE’s guidance on energy conservation standards and test procedures has proven to be helpful and assisted in resolving complications or confusion that arises on an urgent basis, and that the Joint Commenters appreciated EERE’s efforts to make all guidance readily accessible on an EERE web portal and to seek guidance from the public on draft guidance prior to issuing final guidance. (Joint Commenters at 1)

The Joint Commenters questioned the value in withdrawing part 1061, and further stated that transparency and public participation are, and should remain, important tenets of good government. The Joint Commenters stated that they recognize that it is likely the Department will withdraw part 1061 per Executive Order 13992, and that, if that is the case, the Joint Commenters expect that DOE, and particularly EERE, will continue to follow the good guidance practices it has historically followed. Specifically, the Joint Commenters expect that EERE will continue to seek input before issuing final guidance and make its guidance documents available to the public in a central location (the EERE web page) in a searchable format. The Joint Commenters appreciated that DOE’s proposal to withdraw part 1061 indicates that DOE will continue to make guidance documents available on its website and will continue the practice of soliciting input on guidance documents of significant public interest, and that DOE recognizes that stakeholders may still petition DOE at any time to issue, withdraw, or revise DOE guidance documents. The Joint Commenters concluded by strongly urging the Department to continue to ensure that guidance is transparent and easily accessible and that all interested parties can participate in its development. (Joint Commenters at 2)

#### *DOE Response*

DOE appreciates the comments in support of DOE’s transparency and public participation practices with respect to guidance documents, particularly with EERE guidance documents. As noted above, DOE has concluded that part 1061 will hinder DOE in providing timely guidance in furtherance of DOE’s statutory duties, and therefore, DOE is withdrawing part 1061. Addressing the challenges enumerated in Executive Order 13992, particularly the economic recovery and

<sup>2</sup> The Joint Commenters’ comments may be found on <https://www.regulations.gov> under docket number DOE-HQ-2020 with the Comment ID DOE-HQ-2020-0033-0012.

climate challenges, requires that agencies be able to use all available authorities and resources at their disposal, and that agencies retain maximum flexibility to act quickly when necessary. Part 1061 does not afford DOE the maximum flexibility needed to address these challenges. As noted above, DOE will continue its normal transparency and public participation practices with respect to guidance documents to which the Joint Commenters refer. However, DOE needs the flexibility to deviate from those practices when necessary, and part 1061 would hinder any such deviation.

*Comments of FreedomWorks Foundation and the Administrative Law Clinic at the Antonin Scalia Law School*

DOE received comments opposing the withdrawal of part 1061 from the Regulatory Action Center at FreedomWorks Foundation (“FreedomWorks”) and the Administrative Law Clinic at the Antonin Scalia Law School (“the Clinic”).<sup>3</sup> Both FreedomWorks and the Clinic noted general issues with agencies’ use of guidance documents, particularly that guidance documents often have the effect of binding regulated entities, and that the lack of transparency and availability to the public of agency guidance documents means that many stakeholders are unaware of agency guidance and its effects, especially when agencies change policies through guidance documents. Both commenters also expressed concerns that agencies do not base decisions made in guidance documents on all potentially available information without soliciting public input. (FreedomWorks at 1–2; Clinic at 2–8)

Both commenters stated that Executive Order 13891 aimed to provide more open and fair regulatory processes by requiring agencies to improve their use of guidance documents and provide more transparency in issuing guidance documents. The Clinic further stated that part 1061 addressed the abuse of guidance documents and formalized best practices. (FreedomWorks at 1; the Clinic at 8–10) Regarding DOE’s proposed withdrawal of part 1061, the Clinic stated that DOE failed to explain why DOE believes part 1061 will deprive DOE of flexibility in determining when and how best to issue guidance based on particular facts and

circumstances and restricts DOE’s ability to provide timely guidance, and stated that in DOE’s issuance of part 1061 the Department concluded that part 1061 allows DOE sufficient flexibility to efficiently address short-term or urgent challenges. (The Clinic at 10–11) FreedomWorks stated that DOE asserts that transparency and public input will hinder DOE’s regulatory output but that this assertion does not support withdrawal of part 1061, because the APA’s requirements for notice and comment are intended to make it difficult for agencies to adopt and impose regulations, and though excepted from those requirements, guidance documents often function as rules and are viewed as binding on the public. (FreedomWorks at 2)

The Clinic further stated that it would be inappropriate to enact major, controversial policies through guidance documents, particularly for controversial issues like economic recovery and climate change. (The Clinic at 11) Both commenters expressed that there is no substitute for providing meaningful opportunity for public comment, especially to the extent guidance may be binding. Both commenters concluded by opposing DOE’s withdrawal of part 1061. (FreedomWorks at 2–3; the Clinic at 11–12)

*DOE Response*

As noted above, DOE is obligated to follow the requirements of the APA. Accordingly, DOE will provide notice and opportunity for comment on actions where required by the APA. And, as noted in the March 2021 NOPR, DOE will continue its practice of soliciting input from stakeholders and the public on guidance documents, where appropriate, even though such input is not required by the APA. DOE reiterates that guidance documents are not binding. DOE will continue to make relevant guidance documents available to the public on its website. Additionally, any member of the public may submit questions, comments, or petitions regarding guidance documents to the *Guidance@hq.doe.gov* inbox. DOE notes that Executive Order 13891, the underlying basis for part 1061 and its requirements, has been revoked.

Moreover, part 1061, in accordance with Executive Order 13891, only required notice and opportunity for comment on significant guidance documents, as that term was defined in Executive Order 13891 and part 1061. DOE also notes that, while part 1061 offered DOE some flexibility to issue guidance documents quickly in urgent situations without adhering to the

procedures of part 1061, under those procedures, DOE would still have been required to conduct certain internal review procedures and to communicate with the Office of Information and Regulatory Affairs regarding the significance of any guidance document and the issuance of a guidance document in urgent circumstances. These requirements could result in unnecessary or harmful delay in DOE’s issuance of important guidance documents that inform the public of important issues in DOE’s actions to address the challenges enumerated in Executive Order 13992.

Agencies must be able to use available authorities and resources in order to address these and other challenges. The APA normally does not require notice and comment for guidance, which agencies may use to expediently inform the public as agencies work to address significant and sometimes fast-moving challenges. For example, it may be necessary for agencies to quickly issue guidance documents to inform the public of how an agency is implementing recently passed laws targeting the challenges facing the nation, such as the American Rescue Plan Act of 2021. (Pub. L. 117–2, March 11, 2021) DOE has concluded that the benefit of increased transparency and public input on certain guidance documents provided by part 1061 is outweighed by the need for maximum flexibility to be able to issue guidance documents expediently to insure the public is informed about actions DOE is taking to address the challenges facing the nation, particularly the economic recovery and climate challenges. Part 1061 hinders DOE in having such maximum flexibility in that it could require DOE to delay issuance of final guidance documents that may be best issued quickly to inform the public of DOE actions in order to address the challenges facing the nation.

*Comments of ASAP and Others*

DOE received comments from the Appliance Standards Awareness Project (“ASAP”) in support of the proposed withdrawal of part 1061.<sup>4</sup> DOE also received a comment from an individual member of the public in support of the proposed withdrawal of part 1061.<sup>5</sup> ASAP agreed with DOE that part 1061 deprives DOE of necessary flexibility to

<sup>3</sup> FreedomWorks’ comments may be found on <https://www.regulations.gov> under docket number DOE–HQ–2020 with the Comment ID DOE–HQ–2020–0033–0013. The Clinic’s comments may be found on <https://www.regulations.gov> under docket number DOE–HQ–2020 with the Comment ID DOE–HQ–2020–0033–0014.

<sup>4</sup> ASAP’s comments may be found on <https://www.regulations.gov> under docket number DOE–HQ–2020 with the Comment ID DOE–HQ–2020–0033–0015.

<sup>5</sup> The individual member of the public’s comment may be found on <https://www.regulations.gov> under docket number DOE–HQ–2020 with the Comment ID DOE–HQ–2020–0033–0012.

clarify policies that address climate change and other pressing challenges in a timely manner, and thus, consistent with the policy directive in President Biden's Executive Order 13992, it should be withdrawn. (ASAP at 2) ASAP stated that guidance documents serve a critical role in administrative practice separate from notice-and-comment rulemaking and that requiring guidance documents to go through the same processes as rulemaking would upset the careful balance the APA created. ASAP further stated that while the longer process associated with notice and comment may be appropriate in some instances, agencies should retain discretion to determine whether such diversion of resources to notice-and-comment procedures is necessary for non-binding guidance that will not have the force of law, and that flexibility is required to enable agencies to nimbly address evolving issues. (ASAP at 3–4)

ASAP stated that the appropriate use of guidance documents provides clarification around issues such as product efficiency testing that benefits both regulated entities and consumers. ASAP listed several examples of instances in which complex DOE rulemaking necessarily leaves gaps that are not always apparent until they are implemented, and that guidance is an essential tool to fill those gaps and ensure a transparent, level playing field and meaningful efficiency information for consumers. (ASAP at 6–7) ASAP stated that these benefits need not come at the cost of transparency. ASAP also noted DOE's intention to continue its transparency and public input practices with respect to guidance documents and encouraged DOE to explore additional procedures to amplify these efforts, noting that such practice need not be enshrined in a rule, and would be better left to agency discretion. (ASAP at 7)

ASAP further stated that adding procedural hurdles to the use of guidance documents not only undermines those benefits, but also, as multiple studies demonstrate, imposes additional costs on agencies' time and resources, making the use of guidance less likely. ASAP noted that adding procedural hurdles to DOE's ability to issue guidance would incentivize more informal means of setting policy, such as internal memoranda and word-of-mouth instruction to enforcement personnel, which would be considerably less transparent or useful to the public than guidance. (ASAP at 8) ASAP also stated that similar procedural mandates regarding guidance documents at other agencies have proven ineffective and resulted in confusion for regulated entities. ASAP

also stated the underlying bases for part 1061 are flawed, particularly that the petition for rulemaking from the New Civil Liberties Alliance that DOE responded to rested on inaccurate premises. (ASAP at 9) ASAP also stated that the proposed withdrawal of part 1061 would further the goals of Executive Order 13992 and would be consistent with other agencies' withdrawals of such rules. ASAP concluded by stating that, while DOE's position does constitute a reversal, it is an appropriate one because the prior rule has not yet been put in effect, and no entity could reasonably claim a reliance interest in its contents. Moreover, ASAP stated that the policy set forth in DOE's March 2021 NOPR is not merely a reflection of a new executive policy, but rather a return to the basic structure of the APA itself, and that structure reflects a sound policy judgment supported by experience and research. (ASAP at 11–12)

#### *DOE Response*

DOE appreciates the comments in support of the proposed withdrawal and agrees with the comments. As noted above, Executive Order 13992 listed several significant challenges currently facing the nation. Agencies must be able to use available authorities and resources in order to address these challenges, and are not generally required to engage in the notice-and-comment process for guidance. DOE has concluded that the benefit of increased transparency and public input on certain guidance documents provided by part 1061 is outweighed by the need for maximum flexibility to be able to issue guidance documents expeditiously to insure the public is informed about actions DOE is taking to address the challenges facing the nation, particularly the economic recovery and climate challenges. Part 1061 hinders DOE in having such maximum flexibility in that it could require DOE to delay issuance of final guidance documents that may be best issued quickly to inform the public of DOE actions in order to address the challenges facing the nation.

Therefore, in accordance with Executive Order 13992 and for the reasons stated above, DOE withdraws its internal agency procedures for issuing guidance documents published at 10 CFR part 1061.

#### **Regulatory Analysis**

##### *A. Review Under Executive Order 12866, "Regulatory Planning and Review"*

This final rule is not a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). As a result, this action was not reviewed by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB). DOE does not anticipate that this rulemaking will have an economic impact on regulated entities. This is a rule of agency procedure and practice. This rule withdraws the regulations governing DOE's internal procedures for the promulgation and processing of guidance documents. DOE is repealing these internal procedures as part of its implementation of Executive Order 13992 and for the reasons cited previously, and does not anticipate incurring significant additional resource costs in doing so.

##### *B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process, 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's website: <https://energy.gov/gc/office-general-counsel>.

This rule withdraws internal agency procedures regarding DOE's issuance of guidance documents. DOE notes, however, that its procedures for public transparency and involvement in the development of agency guidance documents will remain unchanged by the withdrawal. DOE guidance documents will continue to be available on DOE's website. DOE will also continue its practice, as appropriate, of soliciting stakeholder input on guidance documents of significant stakeholder and public interest. Additionally, stakeholders may still petition DOE at any time to issue, withdraw or revise DOE guidance documents, or inquire

about DOE guidance documents, by emailing petitions or inquiries to [Guidance@hq.doe.gov](mailto:Guidance@hq.doe.gov). The benefits of binding DOE to the procedures of part 1061 therefore are outweighed by the need for DOE to have the ability to issue guidance timely and effectively to address the challenges listed in the Executive Order. Moreover, DOE notes that guidance, whether issued under part 1061 or otherwise, is non-binding, and does not have the force and effect of law. DOE therefore does not anticipate any significant economic impacts from this final rule. For these reasons, DOE certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE did not prepare a regulatory flexibility act analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

#### *C. Review Under the Paperwork Reduction Act of 1995*

This rule imposes no new information or record keeping requirements. Accordingly, Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 et seq).

#### *D. Review Under the National Environmental Policy Act of 1969*

Pursuant to the National Environment Policy Act of 1969 (NEPA), DOE has analyzed this action in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for a categorical exclusion under 10 CFR part 1021, subpart D, appendix A5 because it amends an existing rule that does not change the environmental effect of the rule and meets the requirements for application of the categorical exclusion. See 10 CFR 1021.410. Therefore, DOE has determined that the promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an EA or EIS.

#### *E. Review Under Executive Order 13132, "Federalism"*

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory

authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. (65 FR 13735) DOE examined this rule and determined that it does not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government. No further action is required by Executive Order 13132.

#### *F. Executive Order 13175 "Consultation and Coordination With Indian Tribal Governments"*

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175. Because this rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

#### *G. Review Under Executive Order 12988, "Civil Justice Reform"*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make

every reasonable effort to ensure that the regulation: (1) Clearly specifies its preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies its retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the rule meets the relevant standards of Executive Order 12988.

#### *H. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate" and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at <https://energy.gov/gc/office-general-counsel>). This rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of \$100 million or more in any year by State, local, and tribal governments, in the aggregate, or by the private sector, so these requirements

under the Unfunded Mandates Reform Act do not apply.

*I. Review Under the Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105-277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule does not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*J. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"*

DOE has determined, under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 53 FR 8859 (March 18, 1988), that this rule does not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

*K. Review Under the Treasury and General Government Appropriations Act, 2001*

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*L. Review Under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use"*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that

promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. The rule withdraws internal agency procedures and does not meet any of the three criteria listed above. Accordingly, the requirements of Executive Order 13211 do not apply.

**Approval of the Office of the Secretary**

The Secretary of Energy has approved publication of this final rule.

**List of Subjects in 10 CFR Part 1061**

Administrative practice and procedure.

**Signing Authority**

This document of the Department of Energy was signed on May 27, 2021, by John T. Lucas, Acting General Counsel, Office of the General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 1, 2021.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

■ Accordingly, the final rule adding 10 CFR part 1061, published in the **Federal Register** on January 6, 2021 (86 FR 45), is withdrawn.

[FR Doc. 2021-11753 Filed 6-3-21; 8:45 am]

**BILLING CODE 6450-01-P**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 204**

**[Docket No. R-1737]**

**RIN 7100-AG07**

**Regulation D: Reserve Requirements of Depository Institutions**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors of the Federal Reserve System ("Board") is adopting amendments to Regulation D (Reserve Requirements of Depository Institutions) to eliminate references to an "interest on required reserves" rate and to an "interest on excess reserves" rate and replace them with a reference to a single "interest on reserve balances" rate; and to simplify the formula used to calculate the amount of interest paid on balances maintained by or on behalf of eligible institutions in master accounts at Federal Reserve Banks, and to make other conforming amendments. The Board requested comment on the amendments and received one comment that addressed issues not raised by the proposed amendments. Accordingly, the Board is adopting the final rule as proposed without change.

**DATES:** Effective July 29, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Sophia H. Allison, Senior Special Counsel, (202-452-3565), Legal Division, or Matthew Malloy (202-452-2416), Division of Monetary Affairs, or Heather Wiggins (202-452-3674), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact 202-263-4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**I. Statutory and Regulatory Background**

Section 19(b)(2) of the Federal Reserve Act ("Act")<sup>1</sup> requires each depository institution to maintain reserves against its transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities within ratios prescribed by the Board for the purpose of implementing monetary policy.<sup>2</sup> The Board's Regulation D (Reserve Requirements of Depository Institutions, 12 CFR part 204) implements the reserve requirements provisions of section 19. Effective March 24, 2020, the Board amended Regulation D to set all reserve requirement ratios for transaction accounts to zero percent.<sup>3</sup>

Section 19(b)(12) of the Act provides that balances maintained by or on behalf of "eligible institutions" in accounts at Federal Reserve Banks may receive

<sup>1</sup> 12 U.S.C. 461(b)(2).

<sup>2</sup> Reserve requirement ratios for nonpersonal time deposits and Eurocurrency liabilities have been set at zero percent since 1990. See Regulation D (Reserve Requirements of Depository Institutions), Final Rule, 55 FR 50540 (Dec. 7, 1990).

<sup>3</sup> Regulation D (Reserve Requirements of Depository Institutions), Final Rule, 86 FR 8853 (February 10, 2021); see Regulation D (Reserve Requirements of Depository Institutions), Interim Final Rule, 85 FR 16525 (March 24, 2020).