DEPARTMENT OF ENERGY

Final Report on Regulatory Review under Executive Order 13783

On March 28, 2017, the President signed Executive Order (EO) 13783, entitled "Promoting Energy Independence and Economic Growth." Among other things, EO 13783 requires the heads of agencies to review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, "agency actions") that potentially burden[1] the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Such review does not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth elsewhere in that order.

On May 18, 2017, I submitted to the Director of the Office of Management and Budget (OMB) the Department of Energy's (DOE) plan to review its agency actions under EO 13783. The plan was also sent to the Vice President, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chair of the Council on Environmental Quality (CEQ). In the plan, I stated that DOE's Regulatory Reform Task Force (Task Force) would conduct the review of agency actions subject to review under EO 13783.

On May 30, 2017, DOE published in the Federal Register a Request for Information (RFI), seeking input and other assistance from entities significantly affected by regulations of the DOE, including State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and manufacturers and their trade associations.[2]

DOE's goal in publishing the RFI was to "create a systematic method for identifying those existing DOE rules that are obsolete, unnecessary, unjustified, or simply no longer make sense." DOE decided to solicit views on: a) how DOE could best conduct its analysis of existing agency actions, and b) insights on specific rules or Department-imposed obligations that should be altered or eliminated.

The comment period on the RFI closed on July 14, 2017. DOE received 132 separate public comments from decision-makers, stakeholders, and the public on rules promulgated by DOE and the burdens some of those rules have imposed. The Task Force has evaluated these comments to achieve meaningful regulatory reform in a manner consistent with our commitment to public participation in the rulemaking process.

DOE sought views on the specific rules or Department-imposed obligations that should be altered or eliminated, because knowledge about the full effects of a rule is widely dispersed in society, and members of the public are likely to have useful information and perspectives on the benefits and burdens of existing requirements and how regulatory obligations may be updated, streamlined, revised, or repealed to better achieve regulatory objectives, while minimizing regulatory burdens, consistent with applicable law. Interested parties may also be well-positioned to identify those rules that are most in need of reform, and, thus, assist the Department in prioritizing and properly tailoring its review process.

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[1] Executive Order 13783 defined burden for purposes of the review of existing regulations to mean to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.

[2] 82 Fed. Reg. 24582 (May 30, 2017)

Beyond the RFI, the Task Force reviewed DOE Directives, Orders, Manuals, and Policies designed to ensure the effective management and operation of the National Laboratories, which contribute to American economic growth and energy security. Also, with the help of the Office of Management and staff for the Under Secretary of Energy, we reviewed DOE's Directives, Orders, Manuals, and Policies specifically for burdens on domestic energy production.

In addition to the work conducted to comply with EO 13783, DOE will continue to review all agency actions to assure that DOE does not burden domestic energy production. For example, as discussed below, we will review agency actions concerning fossil fuel consumption in Federal buildings, impact of building codes, and nuclear export licensing. DOE is committed to reducing regulatory burdens on the American people to unleash domestic energy production and promote job creation and economic growth.

Recommendations to Reduce Regulatory Burdens on Domestic Energy Resources

Based on a review of the comments received in response to the RFI, coupled with the work of the Task Force to identify both internal and external agency actions that inhibit domestic energy development and use, DOE's Task Force offers the following recommendations:

1) Streamline Natural Gas Exports;
2) Review National Laboratory Policies;
3) Review National Environmental Policy Act (NEPA) Regulations; and
4) Review the DOE Appliance Standards Program.

DOE Task Force Recommendations

1) Streamline Natural Gas Exports

Several commenters encouraged DOE to expedite exports of Liquefied Natural Gas (LNG).

On September 1, 2017, DOE announced a proposed rule to provide faster approval of small-scale natural gas exports, including LNG. This measure will expedite the review and approval of applications to export small amounts of natural gas in the emerging small-scale LNG export market.

Under the Natural Gas Act, DOE has jurisdiction over imports and exports of natural gas. For applications to export natural gas to countries without a qualifying free trade agreement (non-free trade agreement countries), DOE must conduct a public interest review before authorizing an export. This proposed rule provides that DOE, upon receipt of any complete application to export natural gas (including LNG) to non-free trade agreement countries, will grant the application if the application meets two criteria: the application proposes to export no more than 0.14 billion cubic feet per day (bcf/d), and the proposed export qualifies for a categorical exclusion under DOE's NEPA regulations.

For applications meeting these criteria, the exports are considered "small-scale natural gas exports" and are deemed in the public interest under the Natural Gas Act. Exports of natural gas to free trade agreement countries are already deemed in the public interest under the Act.

The Task Force will also consider whether future rulemakings can allow for expedited processing of larger-scale exports of natural gas as consistent with applicable law and DOE's statutory authority.

2) Review National Laboratory Policies

DOE manages several National Laboratories that support the Department's energy, science, and nuclear non-proliferation missions. As part of our review, the Task Force conducted a comprehensive review of operations and procedures at the National Labs. The National Labs conduct research and development of innovative technologies that have the potential to enable future energy production. The Task Force identified several areas for reform that would permit the National Laboratories to operate more efficiently, focusing more time and resources on their mission-critical work: conducting early-stage research and development of innovative energy technologies that advance American economic growth and energy security.

3) Review DOE's National Environmental Policy Act (NEPA) Regulations and Implementation

DOE received comments on the RFI concerning streamlining and simplifying the agency's external regulations (10 CFR 1021) and internal operations to improve effectiveness and efficiency of NEPA document approval processes. The Task Force is comprehensively reviewing NEPA and offers several specific recommendations to reform DOE's NEPA processes to optimize and ensure compliance with existing statutes, CEQ regulations (40 CFR 1500-1508), and EO.

Specific NEPA recommendations include:

- Reform the NEPA process for permitting and export applications, including LNG and infrastructure.

- Review existing NEPA policies to assess whether DOE should grant more categorical exclusions. Further, enable DOE's adoption of categorical exclusions already approved by other Federal agencies, and foster interagency collaboration, such as working with the Bureau of Land Management to consider categorical exclusions for geothermal energy on Federal lands.

- Remove language in DOE Regulations (10 CFR 1021) that is not consistent with overarching CEQ regulations (40 CFR 1500-1508).

4) Review DOE Appliance Standards Program

Pursuant to the Energy Policy and Conservation Act of 1975 (EPCA), DOE implements minimum energy conservation standards and separate test procedures for more than 60 categories of appliances. DOE's energy conservation standards apply to this EO because they impact U.S. energy consumption, the vast majority of which comes from oil, natural gas, coal, and nuclear resources.

Below is a summary of the various public comments and proposals that DOE has received and is considering:

- Review the Process Rule. Many commenters have asked DOE to follow and review the 1996 Process Rule (10 CFR Appendix A to Subpart C). The Process Rule describes the procedures, interpretations, and policies that guide DOE in establishing new or revised energy-efficiency standards for consumer products. Given our commitment to transparency and regulatory certainty, DOE will consider issuing a RFI to gather additional feedback from stakeholders on how to amend or improve the Process Rule.

- Reduce the Burden of Serial Rule-making. Many stakeholders, including manufacturers and small businesses, regard as overly burdensome and unnecessary the statutory requirement to reconsider standards at least once every six years.

    - Commenters offered similar feedback in response to the Department of Commerce's RFI pursuant to the Presidential Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing.

    - Commenters of both DOE's and Commerce's RFI suggest extending the time period between consideration of standards to give regulated industries more time to comply. This would require statutory changes, which are outside the scope of EO 13783.

  However, DOE will consider other agency actions to reduce regulatory burdens on American families and businesses. As stated below, such reforms would give DOE more time to determine, before considering amending standards for a product, whether costs were accurately estimated and expected energy savings were realized.

  The current 6-year review process may not provide adequate time for such a retrospective analysis, which is critical to determine whether energy conservation standards are working as intended and the underlying assumptions are sound.

    - In lieu of statutory changes to the 6-year review period, DOE should consider "no amended standards" determinations when supported by data and when small energy savings require significant upfront cost to achieve.

    - Consider voluntary, non-regulatory, and market-based alternatives to standards-setting. For example, when appropriate and consistent with the law, consider using established industry test procedures as the DOE test procedures.

    - Consider establishing a baseline for energy savings that qualify as not significant and thus not economically justified.

- Refrain from enacting standards through a direct final rule because of the economic burden it may impose on households and the lack of consumer voice in the rulemaking process.

- Improve Cost-Benefit Analysis. EPCA requires DOE to promulgate rules that are economically justified, but this definition is subject to interpretation. Setting clear definitions that evaluate the comprehensive range of costs and benefits is crucial to ensure that DOE's conservation standards save energy while minimizing economic burdens. Some topics for consideration include:

  - Establish internal DOE standards for how to regulate when large portions of the public would bear net costs (costs exceed benefits). Adopting a standard for determining a level at which the net cost is too large would preserve resources and mitigate burdens on consumers.

  - Conduct a retrospective review of previous standards to assess the validity of DOE's analysis before it is used in new rules. This would give DOE enough time to collect information on consumer preferences and behavior, including surveys of consumers.

- Reconsider standards and test procedures for particular products. Commenters identified numerous standards and test procedures for reconsideration, citing excessive regulatory burdens. DOE is evaluating these comments, examples of which include:

  - Review standards for natural gas products to consider whether the standards are inconsistent with the intent of EO 13783 to minimize regulatory burdens on domestic energy resources.

  - Reconsider, or refrain from establishing, certain standards, including commercial packaged boilers, commercial and industrial fans and blowers, the refrigerated beverage vending machine standards rule published in 2016; the commercial refrigeration equipment standards rule published in 2014; the residential furnace fan rule published in 2014; and the residential water heaters standards published in 2010. Other commenters recommend maintaining many of these standards.

  - Repeal or reconsider several test procedures, including for compressors, residential central air conditioners and heat pumps, and consumer and commercial water heaters. Other commenters recommend maintaining current test procedures.

- Follow the requirements of EO 13783 when analyzing climate impacts. EO 13783 withdraws certain documents concerning the development of the Social Cost of Carbon (SCC) and requires agencies to follow the requirements of OMB Circular A-4 in climate analyses. DOE will follow these requirements in our regulations. Also, some commenters encouraged DOE not to use SCC to calculate the climate impacts of regulations.

In addition to the recommendations listed above, DOE is committed to enhancing engagement with stakeholders in an open and transparent process. Building on the listening session held on October 2, 2017, DOE is preparing to send a letter to each of the Department's Federal Advisory Committees requesting them to include regulatory reform on the agenda for their next meeting. DOE will also consider holding additional listening sessions on a semi-regular basis to gather feedback and hold the Department accountable to the public.

Furthermore, DOE will continue to consider other areas where it may be possible to relieve burdens on domestic energy production. For example, DOE will consider, consistent with Federal law, possible flexibility for regulations relating to fossil fuel consumption in Federal buildings, buildings codes, nuclear export licensing, and DOE's proposed nuclear damage contingent cost allocation rule. In short, we will remain committed to reducing burdens on all kinds of domestic energy production.

Section 2(d) of EO 13783

These recommendations comprise DOE's final report, which will be submitted to the Vice President, the OMB Director, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chair of the Council on Environmental Quality, as required by section 2(d) of EO 13783.

If implemented, these recommendations would alleviate or eliminate aspects of agency actions that burden domestic energy development, production, and use.

OCT 2 4 2017
Date

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Secretary of Energy