

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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U.S. DEPARTMENT OF ENERGY

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FE DOCKET NOS. 14-179-LNG, *ET AL.*

ORDER REMOVING END USE REPORTING PROVISION  
FROM EXISTING EXPORT AUTHORIZATIONS

DOE ORDER NO. 4322

DECEMBER 13, 2018

## **I. INTRODUCTION**

Concurrently with the issuance of this Order, the Department of Energy’s Office of Fossil Energy (DOE/FE) is announcing in a policy statement (Policy Statement)<sup>1</sup> published in the *Federal Register* that it is discontinuing its practice, adopted in 2016, of including an “end use” reporting provision in orders authorizing the export of domestically produced natural gas, including liquefied natural gas (LNG), issued under section 3 of the Natural Gas Act (NGA).<sup>2</sup> Under this practice, many authorization holders are currently required to track and report the country (or countries) of destination into which their exported LNG or natural gas was “received for end use.” Due to practical concerns about this reporting requirement and a reconsideration of the need for the requirement given those concerns, DOE/FE has determined that it is prudent to discontinue this requirement in export authorizations going forward. DOE/FE thus will revert to its prior practice of requiring authorization holders to report, in relevant part, the country (or countries) into which the exported LNG or natural gas “was actually delivered.”

The Policy Statement applies only to future export authorizations. In this Order, DOE/FE is removing the end use reporting provision from applicable existing export authorizations issued since February 2016. Specifically, pursuant to DOE/FE’s authority under 10 C.F.R. § 590.404, DOE/FE is removing the end use provision from 42 long-term and short-term export authorizations issued between February 2016 and December 2018. These orders—and the ordering paragraphs amended by this Order—are identified in the Appendix. The amended reporting language is effective immediately for each of the designated orders, as set forth below.<sup>3</sup>

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<sup>1</sup> U.S. Dep’t of Energy, Eliminating the End Use Reporting Provision in Authorizations for the Export of Liquefied Natural Gas; Policy Statement, 83 Fed. Reg. 65078 (Dec. 19, 2018) [hereinafter Policy Statement].

<sup>2</sup> The authority to regulate the imports and exports of natural gas, including LNG, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for Fossil Energy in Redelegation Order No. 00-006.02, issued on November 17, 2014.

<sup>3</sup> The terms “authorization” and “order” are used interchangeably herein.

## II. BACKGROUND

### A. Statutory Background

DOE is responsible for authorizing exports of natural gas to foreign nations pursuant to section 3 of the NGA, 15 U.S.C. § 717b. Under section 3(c) of the NGA, exports of natural gas to countries with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (FTA countries) are “deemed to be consistent with the public interest.” Therefore, applications authorizing natural gas and LNG exports to FTA countries must be granted “without modification or delay.”<sup>4</sup> Section 3(a) of the NGA governs exports to any other country with which trade is not prohibited by U.S. law or policy (non-FTA countries). DOE has consistently interpreted section 3(a) of the NGA as creating a rebuttable presumption that a proposed export of natural gas to non-FTA countries is in the public interest.<sup>5</sup> Accordingly, DOE conducts an informal adjudication and grants the application unless DOE finds that the proposed exportation to non-FTA countries will not be consistent with the public interest.<sup>6</sup>

### B. Regulatory Background

DOE’s regulations implementing section 3 of the NGA are codified at 10 C.F.R. Part 590. Under 10 C.F.R. § 590.404, DOE/FE has broad authority to “issue a final opinion and order and *attach such conditions* thereto as may be required by the public interest after completion and

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<sup>4</sup> 15 U.S.C. § 717b(c). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

<sup>5</sup> See *Sierra Club v. U.S. Dep’t of Energy*, 867 F.3d 189, 203 (D.C. Cir. 2017) (“We have construed [NGA section 3(a)] as containing a ‘general presumption favoring [export] authorization.’”) (quoting *W. Va. Pub. Serv. Comm’n v. U.S. Dep’t of Energy*, 681 F.2d 847, 856 (D.C. Cir. 1982)).

<sup>6</sup> See *id.* (“there must be ‘an affirmative showing of inconsistency with the public interest’ to deny the application” under NGA section 3(a)) (quoting *Panhandle Procedures & Royalty Owners Ass’n v. Econ Regulatory Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

review of the final record.”<sup>7</sup> In the long-term and short-term export authorizations issued by DOE/FE to date (both to FTA and non-FTA countries), DOE/FE imposes conditions on the authorization holder.

### **C. Long-Term LNG Export Authorization Orders - 2011 to January 2016**

In 2011, DOE/FE issued its first long-term export authorization to a LNG export project to be located in the lower-48 states. From that time through January 2016, DOE included two reporting provisions in every long-term LNG export authorization order that are relevant here.

First, DOE/FE required the long-term LNG export authorization holder to include the following provision in any agreement or other contract for the sale of LNG exported pursuant to its authorization:

Customer or purchaser acknowledges and agrees that it will resell or transfer U.S.-sourced natural gas in the form of LNG purchased hereunder for delivery to the countries identified ..., and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to [the long-term LNG export authorization holder] that identifies the country of destination, upon delivery, into which the exported LNG or natural gas was actually delivered, and to include in any resale contract for such LNG the necessary conditions to insure that [the long-term LNG export authorization holder] is made aware of all such actual destination countries.

Second, as part of the monthly reporting requirements imposed as a condition in these long-term LNG export authorization orders, DOE/FE required the authorization holder to report, for each LNG cargo, “the country (or countries) of destination into which the exported LNG was actually delivered.”

Importantly, for all the orders issued during this timeframe, this language remains in effect. DOE/FE did not amend those orders to change these two reporting provisions and is not doing so through this Order. However, beginning in February 2016, DOE/FE incorporated different

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<sup>7</sup> 10 C.F.R. § 590.404 (emphasis added).

language for these two reporting provisions in long-term (and some short-term) LNG export authorization orders, as explained below.

#### **D. Long-Term LNG Export Authorization Orders – February 2016 to Present**

On February 5, 2016, DOE/FE granted the applications of certain Canadian companies requesting authorization to export U.S.-sourced natural gas by pipeline to Canada, where the companies planned to export U.S. natural gas to Canada by pipeline, then liquefy the U.S. natural gas and export it in the form of LNG to other countries.<sup>8</sup> These applications raised novel legal and policy considerations. In particular, DOE/FE was concerned about the potential for U.S.-sourced natural gas to be exported to a neighboring FTA country (Canada or Mexico), then re-exported as LNG from those countries to non-FTA countries without DOE/FE having knowledge of the final destination country. Such a situation could lead to a company attempting to circumvent the public interest review requirement of NGA section 3(a) by transiting U.S.-sourced natural gas through a FTA country to a non-FTA country. Additionally, as the U.S. LNG export market developed, DOE/FE sought greater transparency about where U.S.-sourced natural gas was being delivered and used around the world.

To address these issues, DOE/FE began adding an “end use” reporting requirement as a condition to all long-term (and some short-term) LNG export authorizations issued on or after February 5, 2016. At that time, DOE/FE did not find that the addition of this end use provision required notice in the *Federal Register*.

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<sup>8</sup> See *Bear Head LNG Corp. and Bear Head LNG (USA)*, DOE/FE Order No. 3770, FE Docket No. 15-33-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export U.S.-Sourced Natural Gas by Pipeline to Canada for Liquefaction and Re-Export in the Form of Liquefied Natural Gas to Non-Free Trade Agreement Countries (Feb. 5, 2016); *Pieridae Energy (USA) Ltd.*, DOE/FE Order No. 3768, FE Docket No. 14-179-LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export U.S.-Sourced Natural Gas Natural Gas by Pipeline to Canada for Liquefaction and Re-Export in the Form of Liquefied Natural Gas to Non-Free Trade Agreement Countries (Feb. 5, 2016).

Under this provision, authorization holders are currently required to include the following provision in any agreement or other contract for the sale or transfer of LNG exported pursuant to its long-term LNG export authorization:

Customer or purchaser acknowledges and agrees that it will resell or transfer U.S.-sourced natural gas in the form of LNG purchased hereunder for delivery to the countries identified in ... and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to [the long-term LNG export authorization holder] that identifies the country of destination (or countries) into which the exported LNG or natural gas was actually delivered and/or received for end use, and to include in any resale contract for such LNG the necessary conditions to insure that [the long-term LNG export authorization holder] is made aware of all such actual destination countries.

Likewise, as part of the monthly reporting requirements, authorization holders are required to report, for each LNG cargo, “the country (or countries) of destination into which the exported LNG was actually delivered and/or received for end use.”

In its orders, DOE/FE has defined “end use” to mean “combustion or other chemical reaction conversion process (*e.g.*, conversion to methanol).”<sup>9</sup> To date, DOE/FE has included this end use provision in 42 export authorization orders.

### III. DISCUSSION

DOE/FE has become aware that it is impracticable, if not impossible, for authorization holders to comply with the end use reporting requirement. For example, a cargo of LNG could be offloaded and regasified in one country, and a portion of the U.S. natural gas could be re-exported by pipeline to another country or countries—without the direct knowledge or control of the parties to the initial export from the United States. As another example, an offloaded volume of U.S. LNG could be commingled with non-U.S. LNG before it is delivered to the end user.

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<sup>9</sup> See, *e.g.* *Pieridae Energy(USA) Ltd.*, DOE/FE Order No. 3639, FE Docket No. 14-179-LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Natural Gas to Canada and to Other Free Trade Agreement Nations, at 3 n.7 (May 22, 2015).

Some portion of this mixture could be reloaded and relocated to another country or countries before it is delivered to the end user, again without the direct knowledge or control of the parties to the initial U.S. export. In light of these possibilities, companies have expressed concern that the end use provision could put their export authorization(s) in jeopardy if they cannot strictly comply with it—*i.e.*, if they are unable to determine exactly where their exports were “received for end use.”

Upon review of this issue, DOE/FE has determined that it is prudent to revert to the original (*i.e.*, pre-February 2016) destination language, which requires authorization holders to report the country (or countries) into which the exported LNG or natural gas “was actually delivered”—not “received for end use.”<sup>10</sup> Based on its analysis of the LNG export market, DOE/FE believes this change is in the public interest. DOE has determined that, for the reasons described herein, there is currently insufficient concern about authorization holders attempting to circumvent the public interest review process for non-FTA exports to justify an end-use reporting requirement—particularly given the compliance difficulties encountered by authorization holders. DOE/FE further believes this action will enhance the accuracy of LNG reporting information provided by authorization holders, as well as minimize administrative burdens on authorization holders in the U.S. LNG export market and those who may purchase U.S. LNG.

For these reasons, DOE/FE is concurrently announcing in the Policy Statement that it is discontinuing its practice of including an end use reporting provision in *future* export authorizations issued pursuant to NGA section 3. To ensure that DOE/FE’s existing export authorizations likewise reflect this change, DOE/FE is hereby amending all orders that currently contain the end use provision. For these affected orders—identified in the Appendix to this

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<sup>10</sup> For additional discussion supporting DOE/FE’s action in this Order, see DOE/FE’s Policy Statement, *supra* note 1.

Order—the relevant ordering paragraphs are amended to require authorization holders to report (in relevant part) only the country (or countries) into which the exported LNG or natural gas “was actually delivered.”

### **ORDER**

Pursuant to section 3 of the Natural Gas Act and DOE/FE’s regulations at 10 C.F.R. § 590.404, it is ordered that:

A. All export authorizations identified in the Appendix to this Order are amended to remove the end use reporting provision from the specified paragraphs. Under each amended paragraph, the authorization holder (whether acting on its own or as an agent), as well as any customer or purchaser, are now required to report only the country (or countries) into which the exported LNG was actually delivered.<sup>11</sup>

Thus, for the ordering paragraph requiring the authorization holder to include the following provision in any agreement or other contract for the sale of LNG exported pursuant to its authorization, the paragraph (and provision) are amended to read:<sup>12</sup>

Customer or purchaser acknowledges and agrees that it will resell or transfer U.S.-sourced natural gas in the form of LNG purchased hereunder for delivery to the countries identified [...], and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to [the authorization holder] that identifies the country (or countries) into which the exported LNG or natural gas was actually delivered, and to include in any resale contract for such LNG the necessary conditions to insure that [the authorization holder] is made aware of all such actual destination countries.

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<sup>11</sup> In keeping with current practice, if a cargo of LNG exported from the United States makes multiple physical deliveries (a “split cargo”), each country receiving delivery of U.S. LNG must be reported as a destination.

<sup>12</sup> Appropriate modification may be made to these paragraphs to tailor them to each applicable authorization holder and order.



Similarly, for the ordering paragraph establishing the monthly reporting requirement, the paragraph is amended to require the authorization holder to report, for each LNG cargo, “the country (or countries) into which the exported LNG or natural gas was actually delivered.”

B. All other obligations, rights, and responsibilities established by each order identified in the Appendix remain in effect.

C. This Order is effective immediately.

Issued in Washington, D.C., on December 13, 2018.

A handwritten signature in black ink, appearing to read 'S. E. Winberg', is written over a horizontal line.

Steven E. Winberg  
Assistant Secretary for Fossil Energy  
Office of Fossil Energy

**APPENDIX**

<b>ORDER (FE DOCKET NUMBER)</b>	<b>DATE ISSUED</b>	<b>AUTHORIZATION HOLDER(S)</b>	<b>TYPE OF AUTHORIZATION</b>	<b>AMENDED ORDERING PARAGRAPHS</b>
3768 (14-179-LNG)	2/5/16	Pieridae Energy (USA) Ltd.	Long-Term Natural Gas Export Authorization to Canada and LNG Re-Export Authorization to Non-FTA Nations	I, P
3770 (15-33-LNG)	2/5/16	Bear Head Corp. and Bear Head LNG (USA), LLC	Long-Term Natural Gas Export Authorization to Canada and LNG Re-Export Authorization to Non-FTA Nations	I, P
3784 (15-149-LNG)	2/8/16	ConocoPhillips Alaska Natural Gas Corp.	Blanket Authorization to Export LNG to FTA and Non- FTA Nations	D, H
3792 (15-63-LNG)	3/11/16	Sabine Pass Liquefaction, LLC	Long-Term LNG Export Authorization to Non-FTA Nations	J, Q
3797 (15-67-LNG)	3/18/16	Cameron LNG, LLC	Long-Term LNG Export Authorization to Non-FTA Nations	I, P
3809 (15-168-LNG)	4/13/16	Flint Hills Resources, LP	Long-Term LNG Export Authorization to FTA Nations	E, L
3829 (15-168-LNG)	5/20/16	Flint Hills Resources, LP	Long-Term LNG Export Authorization to Non-FTA Nations	G, N
3825 (16-29-LNG)	5/26/16	Cheniere Marketing	Blanket Authorization to Export Previously Imported LNG	C, G
3846 (15-90-LNG)	7/15/16	Cameron LNG, LLC	Long-Term Export Authorization to Non-FTA Nations	J, Q

3866 (16-28-LNG)	7/21/16	Venture Global Plaquemines LNG, LLC	Long-Term Export Authorization to FTA Nations	E, L
3867 (16-15-LNG)	7/21/16	Eagle LNG Partners Jacksonville, LLC	Long-Term Export Authorization to FTA Nations	E, L
3324-A (11-59-LNG)	7/29/16	Lake Charles Exports, LLC	Long-Term Export Authorization to Non-FTA Nations	J, Q
3868 (13-04-LNG)	7/29/16	Lake Charles Export Company, LLC	Long-Term Export Authorization to Non-FTA Nations	J, Q
3869 (15-190-LNG)	8/17/16	Rio Grande LNG, LLC	Long-Term Export Authorization to FTA Nations	E, L
3877 (16-33-LNG)	8/24/16	American LNG Marketing LLC	Blanket Authorization to Export Natural Gas to FTA Nations	E, I
3904 (16-34-LNG)	10/02/16	Cameron LNG, LLC	Blanket Authorization to Export Natural Gas to	E, J
3937 (16-98-LNG)	11/28/16	Carib Energy (USA) LLC	Long-Term Export Authorization to Non-FTA Nations in Central America, South America, or the Caribbean	F, J
3909 (13-132-LNG)	11/30/16	Magnolia LNG, LLC	Long-Term Export Authorization to Non-FTA Nations	J, Q
3956 (12-100-LNG)	12/16/16	Southern LNG Company, L.L.C.	Long-Term Export Authorization to Non-FTA Nations	J, Q
3957 (16-108-LNG)	12/19/16	Freeport Expansion, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC & FLNG Liquefaction 3, LLC	Long-Term Export Authorization to Non-FTA Nations	J, Q

3968 (16-144-LNG)	2/28/17	Driftwood LNG LLC	Long-Term Export Authorization to FTA Nations	E, L
4007 (16-141-LNG)	3/28/17	Chevron U.S.A., Inc.	Blanket Authorization to Export Previously Imported LNG to Non-FTA Nations	C, D
4019 (16-188-LNG)	4/18/17	Okra Energy, LLC	Blanket Authorization to Export LNG to FTA Nations in the Caribbean and Latin America	F
3978 (12-156-LNG)	4/25/17	Golden Pass Products LLC	Long-Term Export Authorization to Non-FTA Nations	J, Q
4025 (13-147-LNG)	6/1/17	Delfin LNG LLC	Long-Term Export Authorization to Non-FTA Nations	J, Q
4046 (16-205-LNG)	6/2/17	Dominion Cove Point LNG, LP	Blanket Authorization to Export LNG to FTA and Non-FTA Nations	E, J
4054 (17-23-LNG)	6/26/17	Freeport LNG Development, L.P.	Blanket Authorization to Export Previously Imported LNG by Vessel	C, G
4010 (16-109-LNG)	6/29/17	Lake Charles LNG Export Company, LLC	Long-Term Export Authorization to FTA and Non-FTA Nations	J, Q
4011 (16-110-LNG)	6/29/17	Lake Charles LNG Export Company, LLC	Long-Term Multi-Contract Export Authorization to FTA and Non-FTA Nations	J, Q
4067 (17-73-CNG)	7/28/17	Pentagon Energy, LLC	Blanket Authorization to Export CNG to Mexico	C
4078 (17-79-LNG)	9/15/17	Eagle LNG Partners Jacksonville II LLC	Long-Term Export Authorization to FTA and Non-FTA Nations	J, Q
4137 (17-161-LNG)	1/10/18	Sabine Pass Liquefaction, LLC	Blanket Authorization to Export LNG to FTA Nations	E, I

4162 (17-105-LNG)	3/11/18	Fourchon LNG LLC	Long-Term Export Authorization to FTA Nations	E, L
4197 (18-35-LNG)	6/4/18	Sabine Pass Liquefaction, LLC	Blanket Authorization to Export Previously Imported LNG to FTA and Non-FTA Nations	D, H
4200 (17-167-LNG)	6/13/18	Galveston Bay LNG, LLC	Long-Term Export Authorization to FTA Nations	E, L
4202 (18-27-LNG)	6/25/18	Blue Water Fuels, LLC	Long-Term Export Authorization to FTA Nations	E, L
4206 (18-15-LNG)	7/6/18	Southern LNG Company, L.L.C.	Blanket Authorization to Export LNG to FTA and Non-FTA Nations	E, J
4244 (18-03-LNG)	9/6/18	Freeport LNG Expansion et al.	Blanket Authorization to Export LNG to FTA and Non-FTA Nations	E, J
4248 (18-70-LNG)	9/19/18	Mexico Pacific Limited LLC	Long-Term Export Authorization to FTA Nations	E, L
4263 (18-137-LNG)	9/28/18	Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC	Blanket Authorization to Export LNG to FTA Nations	E, J
4277 (18-78-LNG)	11/9/18	Corpus Christi Liquefaction Stage III, LLC	Long-Term Export Authorization to FTA Nations	E, L
4302 (18-69-LNG)	11/19/18	BP Energy Co.	Blanket Authorization to Export Previously Imported LNG to FTA and Non-FTA Nations	D, H