

May 8, 2017

M-17-24

MEMORANDUM FOR: REGULATORY REFORM OFFICERS AND REGULATORY POLICY OFFICERS AT EXECUTIVE DEPARTMENTS AND AGENCIES**FROM:** Dominic J. Mancini, Acting Administrator Office of Information and Regulatory Affairs**SUBJECT:** Guidance for Section 2 of Executive Order 13783, Titled “Promoting Energy Independence and Economic Growth”**Section I. Background**

This memorandum provides guidance regarding Section 2 of [Executive Order \(EO\) 13783](#), titled “Promoting Energy Independence and Economic Growth,” published on March 28, 2017.

Section 2(a) of EO 13783 requires the head of each Executive Department and Agency (agency) to review all of that agency’s existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources.

Section 2(c) requires the head of each agency to submit to the Director of the Office of Management and Budget (OMB) by May 12, 2017, (*i.e.*, 45 days from the date EO 13783 was issued) a plan to carry out the review of agency actions discussed above. The plan shall also be 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).

An agency that determines that it does not have agency actions described above shall submit a written statement to the OMB Director to that effect and, absent a determination by the OMB Director that such agency has agency actions described in Section 2(a), shall have no further responsibilities under Section 2.

Sections 2(d) requires all agencies that submitted a plan to submit a draft final report by July 26, 2017, (*i.e.*, 120 days from the date EO 13783 was issued) 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 CEQ. The draft final report shall include specific

recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency actions that burden domestic energy production.

Section 2(e) requires the report to be finalized by September 24, 2017, (*i.e.*, 180 days from the date EO 13783 was issued) unless the OMB Director, in consultation with other Executive Office of the President officials who receive the draft final report, extends the deadline.

Agencies are encouraged to coordinate their compliance with Section 2 of EO 13783 with their compliance with EO 13777, which directs agencies to establish Regulatory Reform Task Forces to evaluate existing regulations generally and make recommendations to the agency head regarding their repeal, replacement and modification, consistent with applicable law. EO 13777 directs these task forces to seek input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including State, local and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations. As part of this outreach, agencies should seek input specifically regarding existing agency actions that potentially burden the development or use of domestically produced energy resources, and recommendations for actions the agency may take to alleviate or eliminate such burden.

Section II. Application

The requirements in this guidance apply to all Executive Departments and Agencies, except for independent regulatory agencies, as defined in 44 U.S.C. 3502(5). This is the same group of agencies subject to the regulatory review requirements in Section 6 of EO 12866.

Independent regulatory agencies are encouraged to provide a plan and report in response to EO 13783, especially those independent regulatory agencies that directly regulate the development or use of domestically produced energy resources.

Section 2(a) of EO 13783 states, “[t]he heads of agencies shall review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Such review shall not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth in section 1 of this order.”

Section 2(b) of EO 13783 further defines "burden" as actions that “unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.”

The types of agency actions that are covered under Section 2(a) of EO 13783 include, but are not limited to, agency actions that materially:

- (1) Affect the design and/or location of domestic energy production;
 - (2) Affect the design and/or location of drilling or mining of energy production resources;
- and

- (3) Limit the use of certain sources of energy, such that the development of domestically produced energy resources from a certain sector may be negatively affected.

Agencies are not required to review agency actions that meet all of the following requirements:

- (1) Mandated by law;
- (2) Necessary for the public interest; and
- (3) Consistent with the policy set forth in Section 1 of EO 13783.

Agency heads should apply reasonable discretion in assessing which agency actions may rise to the level of potential burden on the development or use of domestically produced energy resources under EO 13783.

Section III. Requirements

A. Plan

As stated above, the heads of all agencies are required to provide a plan by May 12, 2017, to the OMB Director and also provide the plan 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 CEQ. The plan should include, at a minimum, how the agency intends to:

- (1) Identify agency actions or categories of actions that potentially burden the development or use of domestically produced energy resources;
- (2) Seek input from entities significantly affected by those agency actions;
- (3) Classify those agency actions;
- (4) Review those agency actions, including any quantitative analysis (*e.g.*, costs, lost production) the agency plans to perform; and
- (5) Develop recommendations that could alleviate or eliminate the potential burden.

The classification should, at a minimum, identify the energy source potentially affected (*e.g.*, oil, natural gas, coal, nuclear, renewable); the type of agency action (*e.g.*, rule, order, guidance document, policy, or other similar agency actions); and whether the potential effects are direct or indirect. The classification should also identify actions that the agency believes are exempt because they are mandated by law, necessary for the public interest, and consistent with the policy set forth in Section 1 of EO 13783, along with a brief explanation of the basis for this determination.

If an agency does not believe that it has any agency actions that potentially burden the development or use of domestically produced energy resources, then the agency should state that in a written statement to the OMB Director, along with a brief explanation of the basis for this determination.

If an agency has actions that potentially burden the development or use of domestically produced energy resources, but does not believe that these actions are suitable for further review because they are mandated by law, necessary for the public interest, and consistent

with the policy set forth in Section 1 of EO 13783, then the agency should identify those actions in the written statement to the OMB Director, along with a brief explanation of the basis for this determination, no later than May 12, 2017.

If the OMB Director does not provide a determination within 30 days that the agency has agency actions as described in Section 2(a), then the agency will not be required to develop a plan or report.

B. Report

The draft final report due to the OMB Director by July 26, 2017, should, at a minimum, include the following information:

- (1) The identification and classification of agency actions that potentially burden the development or use of domestically produced energy resources;
- (2) How the agency plans to seek input from entities significantly affected by agency actions that potentially burden the development or use of domestically produced energy resources;
- (3) Recommendations, consistent with law, that could alleviate or eliminate aspects of agency actions that burden domestic energy production or use;
- (4) The expected timeframe for when the recommendation would be implemented;
- (5) How the agency will track implementation, including points of contact;
- (6) To the extent feasible, preliminary estimates by agency action of the costs and cost savings, increased production, or other beneficial effects, that may be achieved by implementing each recommended action; and
- (7) Whether those actions have been identified as part of activities undertaken in compliance with [EO 13771](#) [EO 13777](#) or .

Agencies should attach the excel spreadsheet template provided with this guidance to the draft final report.

When estimating cost savings, agencies should use the guidance provided for EO 13771 and OMB Circular A-4. If an agency is unable to monetize the cost savings of a recommended agency action, the agency should describe qualitatively and include any planned future actions to determine the cost savings.

Agency recommendations are to be accomplished using existing resources.

The draft final report should be submitted by July 26, 2017, to the OMB Director and concurrently 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 CEQ. A copy of the draft final report should also be sent to the Administrator of the Office of Information and Regulatory Affairs, who will coordinate Executive Office of the President review, in consultation with the Assistant to the President for Economic Policy. Agencies should consider seeking public input on the draft final report, and should consult with OMB on appropriate means for doing so.

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Agencies shall publish their final reports in the *Federal Register* and on the agency website, as well as submit copies to the OMB Director, the Vice President, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chair of the CEQ.