

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](#) or [EO 13777](#).

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.

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.

Agency	Sub-agency	RIN/Agency Identifier (if applicable)	Referenced Recommendation Number	Agency Action Title	Type of Agency Action	Preliminary Summary	Timeframe		Energy Industry Affected	Identified in EO 13777 section EO 13777	Cost or Cost Savings of Rule (Amounts are estimates per acre)						Length of Time that Cost Savings Occur (in years)	How Implementation will be Tracked	Mandated by Law	Necessary for the Public Interest	Consistent with the Policy Set Forth in Section 1 of EO 13883	Required to be Reviewed		
							Expected Start Date (MM/YY)	Expected Finalization (MM/YY)			Range, if available													
											Priority Estimate		Low Estimate		High Estimate									
7 percent	3 percent	7 percent	3 percent	7 percent	3 percent	7 percent	3 percent																	
XXXX	YY	AAAA-AA00	1	ZZZZZ	Guidance Document	ARCCB	1/9/2017	09/2018	Natural Gas	EO 13771	\$75	\$30	\$10	\$5	\$150	\$50	5	AAAAEEB	Yes	Yes	No	Yes		
				IM 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews		Description: The purpose of this IM was to establish a process for ensuring orderly, effective, timely, and environmentally responsible leasing of oil and gas resources on Federal lands. The leasing process established in this IM was intended to create more certainty and predictability, protect multiple-use values when the BLM makes leasing decisions, provide for consideration of natural and cultural resources as well as public involvement with an awareness of the surrounding land ownership. The IM was also intended to reduce the backlog of unissued leases. Effects: The IM has resulted in longer time frames to provide analysis and responses to protests and appeals, as well as longer lead times for districts to clear parcels for sale. It has also resulted in increased workload and staffing needs to conduct additional upfront environmental analysis. 5/17/2010																		
				IM 2013-101, Oil and Gas Leasing Reform – Master Leasing Plans (MLPs)		Description: This IM supplements existing BLM policy and guidance for processing Applications for Permit to Drill and outlines the regulatory and statutory requirements of Onshore Oil and Gas Order Number 1 (Order 1) and the Energy Policy Act of 2005. Effects: The effect of this IM has been extended lead times for leasing while the BLM completes the public scoping and analysis for Master Leasing Plans. In addition, many areas have also been removed from leasing in recent years through the MLP process. 4/15/2013																		
				IM 2013-177, National Environmental Policy Act (NEPA) Compliance for Oil and Gas Lease Reinstatement Petitions		Description: This IM directs all oil and gas leasing offices to: 1) ensure Resource Management Plan conformance; 2) evaluate the adequacy of existing NEPA analysis and documentation; and 3) complete any necessary new or supplemental NEPA analysis and documentation before approving a Class 1 or Class II oil and gas lease reinstatement petition. Effects: This IM has resulted in additional analysis and review time that often involves another Surface Management Agency and, in some instances, has led to adding new lease stipulations prior to lease reinstatement. 8/13/2013																		
				IM 2016-140, Implementation of Greater sage-grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Sequential Prioritization Onshore Order's Nos. 3, 4 and 5		Description: This IM provides guidance on prioritizing implementation decisions for BLM oil and gas leasing and development, to be consistent with Approved Resource Management Plan Amendments for the Rocky Mountain and Great Basin Greater sage-grouse Regions and nine Approved Resource Management Plans in the Rocky Mountain Greater sage-grouse Region (collectively referred to as the Greater sage-grouse Plans). This IM applies to activities in the areas covered by both the Rocky Mountain and Great Basin Regions Records of Decision, issued by the BLM in September 2015. This IM also contains reporting requirements for communication between State Offices and the Washington Office. Effects: This IM requires additional analysis and staff time to assess parcels and weigh potential impacts to the Greater sage-grouse before the parcels are offered for leasing. It also requires additional analysis and staff time to process drilling permit approvals near Greater sage-grouse areas. 9/1/2016 1/17/2017																		
						INVESTIGATING THE NEW REGULATIONS FOR OIL AND GAS updated and replaced Onshore Orders for the security, oil measurement, and gas measurement regulations that had been in place since 1989. The recent rulemakings resulted in new site security, oil measurement, and gas measurement regulations for Onshore Federal and Indian oil and gas production and are codified in the Code of Federal Regulations at 43 C.F.R. part 3170. These rulemakings were prompted by external and internal oversight reviews which found many of the BLM's production measurement and accountability policies to be outdated and inconsistently applied. The new rules also address some of the Government Accountability Office concerns for High Risk with regards to the Department's production accountability. Effects: Combined, the new regulations improve the ability of the BLM to ensure accurate measurement, accountability, and proper reporting of oil and gas produced from Federal and Indian land in order to ensure that taxpayers and Indian tribes receive their fair share of royalty due. The new regulations also provide a process for approving new technology that meets defined performance goals. However, the regulations impose new cost burdens on operators. The cost estimates for each individual rule are as follows:																		

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (5)

IM 2016-140, Process for Assessing, Coordinating, and Implementing Greater sage-grouse Land Use Plan Adaptive Management Hard and Soft Triggers

BLM Land Use Planning Handbook, H-1601-1, Appendix C

Description: This IM directs the implementation of the land use plan adaptive management process to evaluate and apply hard and soft triggers and responses, as detailed in the Greater sage-grouse Approved Resource Management Plans and Amendments, Great Basin and Rocky Mountain Greater sage-grouse Regional Records of Decision (September 21, 2015).

Effects: This IM requires consistent timelines, state/local coordination, and public outreach for evaluating the triggers and responses required by the plans. Implementation of an adaptive management process may also slow the rate of energy development.

9/1/2016

Description: The Land Use Planning Handbook describes the BLM's overall planning process. Appendix C of the Planning Handbook provides a brief summary of each program's decisions, including consideration of restrictions. As such, it provides summary information on what restrictions each program may propose in a planning process.

Effects: Based on the information in Appendix C of the Land Use Planning Handbook, the regulations, manuals, handbooks, and IMs for each program that may put restrictions on uses can be individually assessed. Whether the individual program's restrictions constitute a potential burden, however, is based at least in part on the actual decisions made in each individual Resource Management Plan.

9/11/2017

Agency	Sub-agency	RIN/Agency Identifier (if applicable)	Referenced Recommendation Number	Agency Action Title	Type of Agency Action	Preliminary Summary	Timeframe		Energy Industry Affected	Identified in EO 13771 and/or EO 13777	Costs or Cost Savings (Present Value Monetized \$millions/year in 2016 dollars)						Length of Time that Cost Savings Occur (in years)	How Implementation will be Tracked	Mandated by Law	Necessary for the Public Interest	Consistent with the Policy Set Forth in Section 1 of EO 13783	Required to be Reviewed
							Expected Start Date (XX/20XX)	Expected Finalization (XX/20XX)			Primary Estimate	Range, if available										
												Low Estimate		High Estimate								
7 percent	3 percent	7 percent	3 percent	7 percent	3 percent																	
XXXX	YYY	AAAA-AA00	1	ZZZZ	Guidance Document	ABCDE	10/2017	04/2018	Natural Gas	EO 13771	\$75	\$30	\$10	\$5	\$150	\$50	5	AAAAEE	Yes	Yes	No	Yes
				IM 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews		Description: The purpose of this IM was to establish a process for ensuring orderly, effective, timely, and environmentally responsible leasing of oil and gas resources on Federal lands. The leasing process established in this IM was intended to create more certainty and predictability, protect multiple-use values when the BLM makes leasing decisions, provide for consideration of natural and cultural resources as well as public involvement with an awareness of the surrounding land ownership. The IM was also intended to reduce the backlog of unissued leases. Effects: The IM has resulted in longer time frames to provide analysis and responses to protests and appeals, as well as longer lead times for districts to clear parcels for sale. It has also resulted in increased workload and staffing needs to conduct additional upfront environmental analysis.	5/17/2010															
				IM 2013-101, Oil and Gas Leasing Reform – Master Leasing Plans (MLPs)		Description: This IM announces the incorporation of Master Leasing Plans (MLP), Chapter V, into H-1624-1 – Planning for Fluid Mineral Resources and establishes a process for integrating an MLP into the land use planning process Effects: The effect of this IM has been extended lead times for leasing while the BLM completes the public scoping and analysis for Master Leasing Plans. In addition, many areas have also been removed from leasing in recent years through the MLP process.	4/15/2013															
				IM 2013-177, National Environmental Policy Act (NEPA) Compliance for Oil and Gas Lease Reinstatement Petitions		Description: This IM directs all oil and gas leasing offices to: 1) ensure Resource Management Plan conformance; 2) evaluate the adequacy of existing NEPA analysis and documentation; and 3) complete any necessary new or supplemental NEPA analysis and documentation before approving a Class I or Class II oil and gas lease reinstatement petition. Effects: This IM has resulted in additional analysis and review time that often involves another Surface Management Agency and, in some instances, has led to adding new lease stipulations prior to lease reinstatement.	8/13/2013															
				IM 2016-140, Implementation of Greater sage-grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Sequential Prioritization Onshore Orders Nos. 3, 4 and 5		Description: This IM provides guidance on prioritizing implementation decisions for BLM oil and gas leasing and development, to be consistent with Approved Resource Management Plan Amendments for the Rocky Mountain and Great Basin Greater sage-grouse Regions and nine Approved Resource Management Plans in the Rocky Mountain Greater sage-grouse Region (collectively referred to as the Greater sage-grouse Plans). This IM applies to activities in the areas covered by both the Rocky Mountain and Great Basin Regions Records of Decision, issued by the BLM in September 2015. This IM also contains reporting requirements for communication between State Offices and the Washington Office. Effects: This IM requires additional analysis and staff time to screen parcels and weigh potential impacts to the Greater sage-grouse before the parcels are offered for leasing. It also requires additional analysis and staff time to process drilling permit approvals near Greater sage-grouse areas.	9/1/2016 1/17/2017															

updated and replaced Onshore Orders for site security, oil measurement, and gas measurement regulations that had been in place since 1989. The recent rulemakings resulted in new site security, oil measurement, and gas measurement regulations for Onshore Federal and Indian oil and gas production and are codified in the Code of Federal Regulations at 43 C.F.R. part 3170. These rulemakings were prompted by external and internal oversight reviews which found many of the BLM's production measurement and accountability policies to be outdated and inconsistently applied. The new rules also address some of the Government Accountability Office concerns for High Risk with regards to the Department's production accountability. Effects: Combined, the new regulations improve the ability of the BLM to ensure accurate measurement, accountability, and proper reporting of oil and gas produced from Federal and Indian land in order to ensure that taxpayers and Indian tribes receive their fair share of royalty due. The new regulations also provide a process for approving new technology that meets defined performance goals. However, the regulations impose new cost burdens on operators. The cost estimates for each individual rule are as follows:

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) (5) [Redacted]

(b) [Redacted]

[Redacted]

(b) [Redacted]

<p>IM 2016-140, Process for Assessing, Coordinating, and Implementing Greater sage-grouse Land Use Plan Adaptive Management Hard and Soft Triggers</p>	<p>Description: This IM directs the implementation of the land use plan adaptive management process to evaluate and apply hard and soft triggers and responses, as detailed in the Greater sage-grouse Approved Resource Management Plans and Amendments, Great Basin and Rocky Mountain Greater sage-grouse Regional Records of Decision (September 21, 2015).</p>	<p>9/1/2016</p>
<p>BLM Land Use Planning Handbook, H-1601-1, Appendix C</p>	<p>Effects: This IM requires consistent timelines, state/local coordination, and public outreach for evaluating the triggers and responses required by the plans. Implementation of an adaptive management process may also slow the rate of energy development.</p> <p>Description: The Land Use Planning Handbook describes the BLM's overall planning process. Appendix C of the Planning Handbook provides a brief summary of each program's decisions, including consideration of restrictions. As such, it provides summary information on what restrictions each program may propose in a planning process.</p> <p>Effects: Based on the information in Appendix C of the Land Use Planning Handbook, the regulations, manuals, handbooks, and IMs for each program that may put restrictions on uses can be individually assessed. Whether the individual program's restrictions constitute a potential burden, however, is based at least in part on the actual decisions made in each individual Resource Management Plan.</p>	<p>3/11/2017</p>