

**U.S. Department of Transportation**  
**Final Report for Executive Order 13783:**  
**Agency Recommendations to Alleviate or Eliminate Actions That Burden**  
**Domestic Energy Production**  
**25 October 2017**

The U.S. Department of Transportation (Department or DOT) has prepared this report to present the analysis that the Department undertook to identify actions that may directly or indirectly burden the development or use of domestic energy sources. The report also identifies actions that unnecessarily burden domestic energy production; and, where appropriate, recommends steps the Department may take to alleviate or eliminate unnecessarily burdensome actions. The Department is providing the report to the Director of the Office of Management and Budget (OMB), 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.

## **I. Overview of Executive Order 13783**

The President issued Executive Order (E.O.) 13783, *Promoting Energy Independence and Economic Growth*, on March 28, 2017, to reduce regulatory burdens on the “clean and safe development of our Nation’s vast energy resources,” and to promote, among other things, economic growth and geopolitical security. Such energy sources include “coal, natural gas, nuclear material, flowing water, and other domestic sources, including renewable sources,” as well as oil. E.O. 13783, Sections 1(b), 2(a).

## **II. Purpose**

Section 2(a) of the E.O. directs agencies to “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.” E.O. 13783, Section 2(a). Section 2(a) exempts from this requirement those actions that are “mandated by law, necessary for the public interest, and consistent with the policy set forth in section 1 of th[e] order.” E.O. 13783, Section 2(a). To that end, E.O. 13783 requires agencies to submit to the Director of OMB an Implementation Plan for conducting the regulatory review (E.O. 13783, Section 2(c)), due May 12, 2017, 45 days after the date of the E.O. The Department submitted its plan on May 12, 2017. Within 120 days (July 26, 2017), agencies must submit a draft report that describes the actions subject to the required review and “include[s] specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production.” E.O. 13783, Section 2(d). Agencies must finalize the draft report within 180 days (September 24, 2017) unless the OMB Director, in consultation with others, extends the deadline. E.O. 13783, Section 2(e). Thereafter, the Department must implement the recommendations as soon as practicable.

### **III. Review by the U.S. Department of Transportation of Existing Regulations, Orders, Guidance Documents, and Policies for Impact on the Use or Development of Domestic Energy Sources**

To identify actions for analysis, the Department submitted to OMB as part of its implementation plan a draft decision tree . The Department used the decision tree to assist in determining whether it should review an agency action under the E.O. and analyze the burden associated with the agency action. The Department used a reporting spreadsheet provided by OMB as a template for tabulating information about agency actions that the Department reviewed under the E.O. The Department also used the spreadsheet to analyze the information and develop this report.

The following sections provide a description of the actions taken by the Department to complete the required review, including engagement with stakeholders.

#### **A. Review of Agency Actions by the Department**

In the implementation plan, the Department advised that it would establish a work group (WG) with representatives from the operating administrations (OA) and the Office of the Secretary (OST) to develop guidance for conducting the review and analysis. The Deputy Assistant Secretary for Transportation Policy convened the Departmental WG, which was composed of senior OA leaders in policy, legal, and economic disciplines to conduct a broad review of existing agency action to identify actions that potentially burden the development or use of domestically produced energy resources. The scope of the review was broad and included the Department's regulations codified in Titles 23, 46, and 49 of the Code of Federal Regulations, related rulemaking documents and other Federal Register notices, guidance, orders, policies, and other similar actions including permits and licenses. The WG was also directed to review each OA's authority to take such actions by considering whether the action was mandated by law, the level of discretion exercised by the agency in implementing the statutory directive, and associated policy reasons for the actions.

The WG was also tasked with providing a qualitative and quantitative analysis of costs or burdens imposed by each potentially burdensome action so that the Department could assess whether the actions unduly burden the development or use of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law. If the Department determined that an action did unduly burden the development or use of domestic energy resources, the OA considered, and where appropriate and permitted by law, made recommendations to suspend, revise, rescind, or undertake further analysis with respect to the existing agency action.

To achieve the goal of alleviating or eliminating aspects of agency actions that burden domestic energy production, the WG participants collaborated within the Department and coordinated with other Federal agencies on matters related to overlapping authorities, posed questions to clarify assigned tasks, and shared best practices and feedback from public engagement.

Each OA evaluated its agency actions in light of the directive in Section 2; regularly reported out on progress of the review, including any issues encountered; and solicited feedback from OST. WG representatives identified key themes and industries potentially affected by covered agency actions, engaged such stakeholders in discussion, and integrated feedback from stakeholders and OST to revise their lists of actions.

Staff from OST's Office of Policy and the Office of the General Counsel reviewed the information and analysis gathered by the OAs and input the OAs received from the public. The staff reviewed the energy sector 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 were direct or indirect. This group also reviewed the OA's justification of actions exempted from the analysis under the three-pronged test: mandated by law, necessary for the public interest, and consistent with the policy set forth in Section 1 of E.O. 13783.

The staff also reviewed the quantitative analysis (e.g., costs, lost production), and clarified, where appropriate, whether the OA's recommendations could alleviate or eliminate the potential burden. The Department reviewed all actions covered by the E.O. that are not exempted and may burden the development or use of domestic energy. These actions were used to prepare this report.

## **B. Engaging the Public on the Department's Review Activities**

In conjunction with the Department's internal review of regulations, guidance, and other policy documents that could potentially burden the safe, efficient development or use of domestic energy resources, the Department has a four-pronged approach to engage with stakeholders.

First, where the Department identified regulatory actions that may impose a burden on the production of domestic energy resources, the OAs reviewed public comments submitted to the regulatory docket associated with such action and summarized ways in which the regulated community believed the regulatory action encumbered domestic energy production. Second, OAs, via their Offices of Government Affairs, engaged in discussions with industry groups and other stakeholders in an effort to learn of concerns. Third, the Department is monitoring incoming correspondence for letters that provide information on actions that potentially burden domestic energy production and make recommendations to alleviate such burden. This correspondence is continually disseminated to the appropriate OA for consideration.

Finally, the Department has undertaken a review of its existing regulations and other agency actions to evaluate their continued necessity, determine whether they are crafted effectively to solve current problems, and evaluate whether they potentially burden the development or use of domestically produced energy resources. To ensure appropriate public engagement and to respond to the President's direction in E.O. 13771, E.O. 13777, and E.O. 13783, as well as other legal authorities, the Department published a Federal Register Notice (Notice), *Notification of Regulatory Review*, on October 2, 2017 to seek written input from the public on existing regulations and other agency actions that are good candidates for repeal, replacement, or modification. 82 Fed. Reg. 45,750. The Notice encourages the public to identify regulations that (a) eliminate jobs or inhibit job creation; (b) are outdated, unnecessary, or ineffective; (c) impose costs that exceed benefits; (d) create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies; or (e) potentially burden the development or use of domestically produced energy resources. The Notice directs the public to provide comments with specific references to form numbers, citations, or other identifiers, and includes a description of the burden imposed and how it could best be addressed (e.g., through repeal, modification, streamlining efforts, regulatory flexibilities, etc.). The Department will review comments at the conclusion of the comment period and, as appropriate, incorporate specific recommendations to the extent permitted by law.

## C. The Department's Recommended Actions to Alleviate or Eliminate Unnecessary Burdens on Domestic Energy Production

In large part, the Department is a grant-making and safety-driven organization. Except in limited circumstances, the Department issues grants to support the development of a safe, efficient, and effective transportation system for the American people and safety regulations that apply broadly across all sectors. These actions are not intended to disproportionately impact the domestic energy sector over other sectors. Nevertheless, the Department has identified a number of actions that may directly or indirectly encumber the use and development of domestic energy resources.

While the Department has undertaken an independent regulatory review to fulfill the requirements of E.O. 13783, recommendations to alleviate or eliminate unnecessary burdens are being evaluated through several deregulatory initiatives, including by engaging with the Department's Regulatory Reform Task Force (RRTF) and OMB. The Department will continue to consult with the RRTF and OMB, as appropriate, to determine the best way to implement the proposed recommendations resulting from this review.

### 1. Licensing of Deepwater Ports for Export of Oil and Liquefied Natural Gas

The Deepwater Ports Act of 1974 (33 U.S.C. 1501 *et seq.*) (DWPA), as amended, establishes a licensing system for the ownership, construction, operation, and decommissioning of deepwater ports (DWP) in waters beyond the territorial limits of the United States. The DWPA authorizes the Secretary of Transportation to approve or deny DWP license applications pursuant to 33 U.S.C. 1504. In 1997, the Secretary delegated DWP licensing authority to the Maritime Administrator of the Maritime Administration (MARAD). The Coast Guard and Maritime Transportation Act of 2012 (Pub. L. No. 112-213, sec. 312) amended the DWPA to grant MARAD authority to license DWPs for the export of oil and liquefied natural gas (LNG) from the United States. Prior to 2012, MARAD's licensing authority only covered DWPs for the import of oil and natural gas.

MARAD implemented this authority by issuing a Final Policy Notice advising industry stakeholders of the process by which MARAD would accept, evaluate, and process license applications for the construction and operation of DWPs for the export of oil and LNG. The Final Policy Notice, *Deepwater Port License Application Process for Offshore Export Facilities* ("Export Policy") was published in the Federal Register on May 7, 2015. 80 Fed. Reg. 26,321. MARAD identified this policy as potentially imposing a regulatory burden on domestic energy production as specified under E.O. 13783. In part, the Export Policy requires existing licensees proposing to convert an existing import oil or LNG facility into an export or bi-directional facility to submit a new license application, including an application fee of \$350,000.

MARAD determined that this requirement would pose unnecessary regulatory and financial burden and create potential processing delays. MARAD recommends that existing licensees seeking authority to export LNG should be exempted from the Export Policy. Existing licensees instead would use existing U.S. Coast Guard regulations (33 CFR parts 149 and 150), current license terms, and other applicable provisions of the DWPA as the framework for submission and review of proposed facility modifications to support export or bi-directional operations.

In an effort to reduce identified burdens imposed by MARAD's Export Policy, MARAD recently exempted an applicant, which proposed to convert an existing DWP into a bi-directional facility, from the Export Policy's requirement for a new application and filing fee. The proposal will instead be reviewed and approved or disapproved under the existing regulatory and statutory authorities governing changes to DWP operations and facility modifications. MARAD anticipates that full implementation of the proposed revision to the Export Policy will occur in the first quarter of Fiscal Year 2018 upon the final publication of a revised Export Policy Notice in the Federal Register.

## 2. Cylinder Requalification Requirements

In 2016, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule (HM-233F) adopting into the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) provisions contained in 96 widely used PHMSA special permits. *Hazardous Materials: Adoption of Special Permits (MAP-21) (RRR); Final Rule*, 81 Fed. Reg. 3635 (Jan. 21, 2016). While the purpose of the final rule was to incorporate longstanding special permits that had an established safety record into the HMR, one of the provisions in the final rule attempted to simplify timelines by requiring both volumetric pressure testing and proof pressure testing to be conducted on a 10-year timeline. Prior to the rule, cylinders undergoing volumetric testing had been required to be requalified once every 12 years, while cylinders undergoing proof pressure testing had been required to be requalified once every 7 years. After publication of the final rule, the National Propane Gas Association (NPGA), a trade association that represents the U.S. propane industry, petitioned for a rulemaking (P-1696), contending that the 10-year requalification period for volumetric testing imposed substantial costs on the industry without a demonstrated safety benefit. Docket No. PHMSA-2017-0019. NPGA requested that PHMSA revise the requalification interval for DOT cylinders to revert back to the 12-year period for volumetric expansion testing. PHMSA has issued a statement of enforcement discretion to address NPGA's immediate concerns and has initiated a rulemaking (HM-219B) to address NPGA's petition. PHMSA is considering revising the requalification interval for DOT cylinders to a 12-year period for volumetric expansion testing (instead of the current 10-year period), and removing a statement referring to the expiration of the first 12-year period.

## 3. Rail Transport of LNG

On January 13, 2017, the Association of American Railroads (AAR), an industry trade group representing primarily major freight railroads, filed a petition for rulemaking (P-1697) requesting that PHMSA revise the Hazardous Materials Table in 49 CFR 172.101 and amend 49 CFR 173.319 to allow LNG to be transported by rail in DOT-113C120W and DOT-113C140W tank cars (collectively, "bulk tank cars"). Docket No. PHMSA-2017-0020. Currently, the HMR does not authorize LNG to be transported by rail in bulk tank cars without a special permit from PHMSA. This petition seeks to adopt a tank car standard for the transport of LNG into the HMR instead of using the special permit process. PHMSA is evaluating AAR's petition and will initiate a rulemaking if the petition is granted.

## 4. Design Criteria and Limitations on the Use of Plastic Pipe

PHMSA regulates the use of plastic piping systems in gas services by establishing design criteria and limitations for the use of plastic pipes. These regulatory requirements are codified at 49 CFR part 192. PHMSA recently issued a Notice of Proposed Rulemaking (NPRM) to respond to petitions for rulemaking, to update requirements to account for technological innovation in the products and best

practices used in plastic pipe installations, and to resolve issues noted during Federal and state pipeline inspections related to the installation of plastic pipe systems. *Pipeline Safety: Plastic Pipe Rule*, 80 Fed. Reg. 29,263 (May 21, 2015). The current plastic pipe regulations do not account for progress in the design and manufacture of plastic pipe and components that have resulted in materials with higher strength characteristics. Additionally, manufacturers and operators are incorporating best practices. As a result, PHMSA received a number of petitions from stakeholders requesting that PHMSA increase the design factor and incorporate the applicable ASTM standard, allow the use of Polyamide-12 (PA-12) pipe, and the use of Polyamide-11 (PA-11) pipe at higher pressures.

PHMSA consulted with the Congressionally mandated Gas Pipeline Advisory Committee (Committee) on the regulations proposed in the NPRM. In June 2016, the Committee determined that the regulations proposed in the NPRM were technically feasible and cost effective if certain amendments were made. PHMSA drafted the final rule that amends part 192 to incorporate changes to enhance pipeline safety, respond to petitions for rulemaking, and accommodate innovations in plastic pipe materials and designs. The proposed rule would reduce the material cost to install new polyethylene (PE) pipe and permit greater technological flexibility by expanding the allowed uses of PA-11 and permitting PA-12. The final rule is currently under review.

## 5. Small Scale LNG Siting

Section 27 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2016 (PIPES Act of 2016), (Pub. L. No. 114-183), directed PHMSA to review and update the minimum safety standards for small-scale LNG facilities. PHMSA is in the process of reviewing these LNG safety regulations for small scale, permanent LNG facilities (“liquefaction sites”), which are codified at 49 CFR part 193. More specifically, PHMSA is evaluating whether more flexible siting requirements are appropriate for small-scale LNG facilities. See 49 CFR part 193, subpart B. Currently these smaller scale liquefaction facilities are subject to the same risk analysis and exclusion zone formulas as larger facilities. PHMSA is evaluating these requirements to determine the risk profile of small-scale liquefaction facilities, and appropriate siting and safety standards. For example, current regulations require a risk-based thermal radiation and flammable-vapor exclusion zone for all permanent LNG facilities and these regulations may unnecessarily burden small-scale liquefaction facilities. If existing siting requirements are inappropriate for small-scale LNG facilities, they may be an obstacle to the creation of these facilities. This could curtail the efficient delivery and use of liquefied natural gas to end users. While these requirements reduce public exposure to LNG fire risks, they may curtail the application of small-scale liquefaction facilities for certain applications such as fueling operations or small-scale import/export where a large exclusion zone is not feasible.

If PHMSA determines that alternative siting requirements are justified given the risk profile of small-scale facilities, the agency intends to initiate an Advance Notice of Proposed Rulemaking (ANPRM) to seek input and information from stakeholders regarding alternative requirements that would give operators more latitude to install small-scale facilities and employ them in ways that may not be practicable with current siting requirements.

## 6. Small LPG Applicability

Section 26 of the 2016 PIPES Act 2016 directed PHMSA to review existing regulations for petroleum gas (LPG) operators with 100 or fewer customers (i.e., small-scale LPG). Current regulations may impose substantial and possibly unnecessary compliance costs on small-scale LPG operators.

Pursuant to this requirement, PHMSA engaged the National Academies of Science (NAS) to conduct a study of existing requirements for these small-scale LPG facilities. PHMSA anticipates that NAS will issue its final report in August 2018. Upon receipt of the final report from NAS, PHMSA will determine the next course of action, and is considering whether, on the basis of the NAS report and additional PHMSA analyses, an ANPRM may be appropriate to adopt appropriate standards for these facilities, which may reduce the regulatory burden on their operators.

## 7. Class Location Requirements

Section 5 of the Pipeline Safety Act of 2011 required the Secretary to issue a report evaluating whether integrity management (IM) program requirements should be expanded beyond high consequence areas (HCAs) and, with respect to gas transmission pipeline facilities, whether applying IM program requirements to these additional areas would eliminate or reduce the need for class location requirements. Class locations were an early method of differentiating risk along gas pipelines by providing a margin of safety based on population density. A pipeline's class location level (Class 1, 2, 3, or 4) drives the design, construction, operation, and maintenance requirements, and can change as population increases. 49 CFR 192.5. A change in class location from an increase in population requires an operator to reduce stress levels in the pipe via a lower maximum allowable operating pressure (MAOP), re-pressure test the pipe, or replace the existing pipe with thicker or stronger pipe.

Industry stakeholders have expressed concerns that these requirements result in unnecessary costs related to pipe replacement when there are alternative measures to maintain safety. PHMSA is reviewing the existing definition of class location, current policies for granting class location Special Permits and whether they should be incorporated into the pipeline safety regulations, and the particular requirements applicable to each class location. PHMSA has initiated a rulemaking and is working on an ANPRM to assist the Agency in analyzing how current regulatory requirements may be amended to allow for alternatives to pipe replacement as a class location changes.