
Regulatory Reform

*Recommendations for the
U.S. Department of Energy*

June 25, 2018



EAC
ELECTRICITY ADVISORY COMMITTEE 

Regulatory Reform

1 Introduction

On December 7, 2017, Secretary of Energy Rick Perry sent a memorandum to all Heads of Departmental Elements to direct their respective Federal Advisory Committee Act (FACA) committees to identify regulatory reforms. Specifically, the Secretary wanted each FACA committee to provide appropriate advice and recommendations on Department of Energy (DOE) regulations, guidance or policies. He was particularly interested in suggestions concerning how DOE regulations, guidance or policies can be improved, streamlined or eliminated. Shortly after receiving the memorandum, the Electricity Advisory Committee (EAC) was directed by the Office of Electricity to identify potential reforms that affected the electricity industry.

This document identifies 5 key reforms that the DOE should consider top priority to reduce the regulatory burden for several of the DOE's key stakeholders.

2 Approach

Prior to the February 2018 meeting of the EAC, EAC Leadership requested that Members provide a list of potential reforms that could reduce burden on the industry or lead to faster development of energy infrastructure. At the meeting, the EAC discussed several of the Member-generated suggestions and agreed to narrow them down given the Secretary's direction. Through a series of meetings, the EAC identified key recommendations based on the impact each reform could have, as well as the potential difficulty to implement each reform.

3 Key Findings

The EAC identified reforms by drawing upon the breadth of experience represented by the EAC membership. The five recommendations described below largely focus on reducing inefficiencies in a variety of areas, and should be considered top priorities for the DOE.

4 Recommendations

Recommendation #1: When and if appropriate, the DOE should advise Congress to eliminate or amend the requirement to conduct a Congestion Study.

The Congestion Study requirement has never been effective, has been impaired by court rulings, and is now consequently obsolete. Instead of trying to adjust the focus of the Study, the EAC would suggest the DOE seek ways to eliminate this requirement or replace it with periodic studies of national grid resilience in coordination with interactions with supporting energy infrastructure, and beyond the

regional planning processes in place today. The EAC understands that these proposed changes would require Congressional action.

Repeal USC Title 16 Chapter 12 Subchapter II Sec. 824(p)

Recommendation #2: Improve, coordinate, and streamline the DOE’s issuance of Presidential Permits in the transmission siting and permitting process.

While the need for new and upgraded transmission facilities has accelerated, obtaining federal permits remains difficult and time consuming. Although the DOE, as the lead agency for a cross-border project, has shown it can provide an efficient process for stakeholder outreach and engagement with the relevant state, local and tribal stakeholders, the Presidential Permit process may not run entirely in parallel with the federal and state approval process, thus causing unnecessary delays. Failure to make timely decisions on the issuance of a Presidential Permit can compromise a project’s economics and even jeopardize the project itself. The DOE could improve the efficiency of the permitting processes by making the DOE’s internal review and engagement with other federal agencies run concurrently with the state process for siting. Additionally, the DOE should impose and enforce strict deadlines for agency processing and approval of Presidential Permits.

- 1) Improve the efficiency of the permitting processes.
- 2) The DOE’s internal review and engagement with other federal agencies should be concurrent with the state process for siting.
- 3) The DOE should impose and enforce strict deadlines for agency processing and approval of Presidential Permits.
- 4) Presently the CFR Title 10, Chapter II, Subchapter A, Part 205, Subpart W, Section 205.328 and 329 is silent on allowing the DOE the option of a Categorical Exclusion (CATEX). For cases in which there are existing similar facilities on either side of the border, a CATEX should be encouraged by the CFR.

Recommendation #3: Take a proactive approach to Critical Electric Infrastructure Information classification.

The DOE has no rules defining how to designate and protect Critical Electric Infrastructure Information (CEII) submitted to the DOE. The EAC understands that the DOE is in the process of developing a procedure for CEII designation.

The DOE leads the national security efforts for the energy sector, which requires sharing security-sensitive information between the DOE, industry, and potentially other third parties. EAC Members identified ways in which the DOE can designate CEII that allows for better information sharing between industry and the DOE. The EAC would recommend that, as a part of the DOE’s ongoing effort, the DOE should consider designating CEII within a fixed time period of its receipt and promptly notifying the CEII provider or submitter of the DOE’s determination.

FERC has a long-standing approach to the designation and sharing of CEII, which applies to information submitted to or designated by the Commission. However, FERC’s approach does not apply to the DOE and FERC’s role is not focused on national security. The DOE should consider its national security role in developing its CEII regulations to appropriately protect this information.

Recommendation #4: When and if appropriate, the DOE should advise Congress to eliminate or amend the requirement to produce an update on the status of Energy Storage every two years.

Instead of requiring a biennial Energy Storage report, the DOE should add focus on grid-scale energy storage technologies to recognize that consumer-level storage is maturing in the marketplace (e.g., EV battery development). The focus should relate to broader grid national resilience initiatives. The EAC understands that this proposed change would require Congressional action.

In US Code Title 42/Chapter 152/Subchapter V/Part D (5), revise “(A) assess, every 2 years, the performance of the Department in meeting the goals of the plans developed under paragraph (4); and” to read “(A) assess, every 5 years, the performance of the Department in meeting the goals of the plans developed under paragraph (4); and”

Recommendation #5: Issue “No Standard” Standards for the products that are at or near maximum technology efficiency levels and Reform EISA 2007 Section 305 (3)(B).

For certain products, after a series of rulemakings, the difference between the "baseline" product and the highest efficiency product ("max tech") decreases substantially. This creates a "pinching effect" in which any potential future energy conservation standard will result in minimal energy savings. One example of this involves the standard for four-foot fluorescent lamps, which took effect on July 14, 2012. The potential efficiency gains from further standards for these lamps are likely limited due to 1) very limited efficiency improvement resulting from previous rulemakings, and 2) rapid growth of LED lamp technology, which has led to a significant decline in fluorescent lamp sales.

The DOE should issue "no standard" standard documents for products such as fluorescent lamps, and for other products that show a similar pinching effect, in order to comply with EISA 2007 Section 305 requirements and not conduct a rulemaking for products that are unlikely to produce significant energy conservation gains.

In CFR Title 10, Chapter 2, Part 430, Subpart C, App. A under "3. Setting Priorities for Rulemaking Activity," add paragraph to end of paragraph (a)... "As part of this review the Department shall consider issuing 'no standard' standard documents for products such as fluorescent lamps, and for other products that show a similar pinching effect, in order to comply with EISA 2007 Section 305 requirements and not conduct a rulemaking for products that are unlikely to produce significant energy conservation gains."

Under current law, EISA 2007 Section 305 (3)(B), after the DOE issues a “no standard” standard, the DOE is required to issue a new determination or a proposed rule within 3 years of publishing a “no standard” standard document. So instead of having 6 years to review or amend (as with a standard that is amended), the DOE only has 3 years for a new rulemaking or “no standard” standard. With products that have little or no possible efficiency improvements, the DOE would be going through the process every 3 years.

This timeline should be eliminated, or aligned with the timeline for new or amended rulemakings. This proposed change would require Congressional action.