



February 10, 2017

National Rural Electric Cooperative Association  
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Transmitted via email to: [reducingregulation@omb.eop.gov](mailto:reducingregulation@omb.eop.gov)

RE: Comments on Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled, "Reducing Regulation and Controlling Regulatory Costs."

Dear Docket,

The National Rural Electric Cooperative Association (NRECA) appreciates the opportunity to provide comments on the Administration's Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, Titled "Reducing Regulation and Controlling Regulatory Costs."

NRECA is the national service organization for America's Electric Cooperatives. The nation's member-owned, not-for-profit electric co-ops constitute a unique sector of the electric utility industry, and face a unique set of challenges. NRECA represents the interests of the nation's more than 900 rural electric utilities responsible for keeping the lights on for more than 42 million people across 47 states. Electric cooperatives are driven by their purpose to power communities and empower their members to improve their quality of life. Affordable electricity is the lifeblood of the American economy, and for 75 years electric co-ops have been proud to keep the lights on. Because of their critical role in providing affordable, reliable, and universally accessible electric service, electric cooperatives are vital to the economic health of the communities they serve.

NRECA applauds the Administration for its efforts to reduce regulatory costs and burdens through its Executive Order on Reducing Regulation and Controlling Regulatory Costs (Hereafter, "the EO") and to provide further direction to Federal regulatory agencies through its Interim Guidance Implementing Section 2 of the EO (Hereafter, the Guidance). Importantly, these actions recognize the significant costs and burdens imposed by existing regulations and create a process to discipline the cost of future regulatory actions by requiring Federal agencies to justify any new additional costs and burdens. Although the Guidance provides additional clarity regarding how this new process will be implemented, there are important issues and questions raised by this policy that would benefit from additional clarification. We appreciate your consideration of the following comments that we outline below.

**I. General Comments**

**A. Use Existing Regulatory Burden Reduction Information**

With Fiscal Year 2017 well underway, agencies can more easily achieve Executive Order's requirement by drawing upon existing recommendations and tools to identify burden reduction. NRECA notes that

existing policy tools such as the requirement for Federal agencies to conduct a retrospective regulatory review of their existing regulatory actions under Executive Order 13563 offer specific burden reduction opportunities. Specifically, this requirement directs agencies to, “consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”<sup>1</sup> NRECA recommends that OIRA advise agencies to utilize their existing retrospective review plans as a starting point for their evaluation of burden reduction opportunities.

Similarly, the requirement for Agencies to report burden reduction initiatives under the Paperwork Reduction Act’s (PRA) annual Information Collection Budget (ICB) should be emphasized with enhanced rigor to hold agencies publicly accountable to identify these initiatives in line with Section 2 of the EO. While we find that agencies often underestimate paperwork burden, the ICB at least can allow OMB to identify the most burdensome regulatory programs and to target burden reduction opportunities.

Although these initiatives were not able to produce the burden and cost reductions that their potential suggests, Agencies already have experience implementing them and can be used with enhanced rigor to meet the EO’s intended goals.

#### **B. Soliciting Public Comment on Stakeholder Initiatives**

NRECA believes that regulated entities and other stakeholders can provide valuable input to inform specific, actionable proposals to implement the policy intent of Section 2 of the EO. Regulated entities are best able to inform estimates of regulatory cost and burden and understand the cumulative regulatory impacts within and across Federal agencies’ regulatory programs. NRECA recommends that the Administration harness this expertise by directing agencies to seek public comment on specific, actionable stakeholder proposals for initiatives that implement Section 2 of the EO. Agencies should then prioritize these proposals as they comply with the EO.

#### **C. Clarifying the intent of the change in the EO’s definition of Regulatory Action**

NRECA notes that in Sec. 4 of the EO, the definition of the term “regulation” or “rule” has changed from past definitions in Executive Orders 12291 and 12866 because it includes more than rules of general applicability. In particular, the latest EO defines a “regulation or rule” as,

an agency statement of general **or particular** activity and future effect designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.....

This definition differs from previous definitions by including the words “or particular” to denote the scope of agency actions subject to the requirements of the EO and accompanying February 2<sup>nd</sup> guidance. NRECA believes that the effect of this change is to subject additional agency actions such as guidance documents, interpretive rules, policy and enforcement memoranda and agency orders and directives to the conditions and requirements of the EO and accompanying guidance.

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<sup>1</sup> <https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review>, Sec 6 (a)

NRECA supports this definition of regulatory action. There are many agency guidance documents, enforcement policies, and interpretations that impose significant costs on utilities that have not undergone public comment, interagency review, or analysis to determine if there are more cost-effective alternatives. For example, EPA has issued guidance for its regional haze rulemaking that substantially increases costs on NRECA member utilities. EPA, however, did not prepare an economic analysis, an analysis of alternatives, or comply with OMB's Good Guidance Bulletin. NRECA supports the EO's definition to ensure that these guidance documents undergo interagency review and are part of the regulatory burden calculation.

## **II. Comments on Specific Questions Posed in the Guidance**

### **A. Section II Question 2: Which new regulations are covered?**

Section 2 of the EO describes a Fiscal Regulatory Cap of "no greater than zero" incremental regulatory costs for Fiscal year 2017, noting that the fiscal year, which began on October 1<sup>st</sup>, is already in progress. NRECA notes that the truncated timeline for the Fiscal Year 2017 Regulatory Cap misses significant opportunities for cost and burden reduction. The Guidance states that,

"the EO's requirements for Fiscal Year 2017 apply to only those significant regulatory actions, as defined in Section 3(f) of Executive Order 12866, an agency issues before noon on January 20 and September 30, 2017. This includes significant final regulations for which agencies issued a Notice of Proposed Rulemaking before noon on January 20, 2017."<sup>2</sup>

It is not clear why the timeframe for the Fiscal Year 2017 Regulatory Cap extends back only to those rules issued before noon on January 20, 2017 and not the entirety of the fiscal year. By not capturing the many "midnight regulations" issued between October 2016 and January 20<sup>th</sup>, the Administration will forgo significant regulatory costs and burdens that could be included in the cap.

### **B. Section II Question 4: Are New Guidance/Interpretive Documents Covered?**

NRECA appreciates that the February 2<sup>nd</sup> OMB Guidance clarifies that agency guidance/interpretive documents will also be subject to the requirements of the EO. However, it is not clear how such previously issued policy actions will be considered in the context of the requirement that, "All of the regulatory actions slated for repeal but not yet finalized also must be included in the *Unified Regulatory Agenda*.<sup>3</sup>" Typically guidance documents and interpretive documents are not always identified in *Agency Unified Regulatory Agenda* publications. However, these types of actions can readily bear "low hanging fruit" in terms of readily identifiable cost and burden reduction opportunities that can offset prospective agency regulations. In light of this ambiguity, OMB should issue additional guidance clarifying how these types of policy actions are expected to comport with the requirement for actions considered under the EO to be previously published in a Unified Regulatory Agenda.

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<sup>2</sup> <https://www.whitehouse.gov/the-press-office/2017/02/03/interim-guidance-implementing-section-2-executive-order-january-30-2017>. Pg. 2

<sup>3</sup> Ibid, Pg. 6

**C. Section III. Question 1: How should costs be measured?**

The Guidance stipulates that costs should be measured as the opportunity cost to society and refers to OMB Circular A-4 for more direction on the definition of this concept. Although these concepts may be well documented from a theoretical standpoint, NRECA is concerned that it may be difficult in practice to define a “common currency” for cost and burden accounting in the context of implementing the EO. For example, it may be easy to compare regulatory compliance data for significant regulatory actions subject to the notice and comment rulemaking process under the Administrative Procedures Act and similarly for burden reduction initiatives under the PRA. However, it may not be so easy to standardize “specific and verifiable” cost savings estimates in the context of Agency guidance and interpretive documents. For these reasons, NRECA recommends that OMB develop standardized accounting procedures for measuring costs savings for each type of regulatory action subject to the EO.

In conclusion, NRECA appreciates the opportunity to provide comments on this important regulatory policy initiative and we look forward to continue working with the Administration throughout its implementation.

Respectfully submitted,

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