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DEPARTMENT OF ENERGY'S "SUNSET" RULE CREATES LEGAL AND PRACTICAL UNCERTAINTY

New rule would add expiration dates to regulations on nuclear safety and other matters without providing explanation or analysis

Today, the Department of Energy announced that it is adding "sunset" dates to a wide range of regulations focused on energy security, nuclear energy, and department operations. The rule will conditionally repeal multiple regulations that, for example, ensure safety in aircraft landing at nuclear sites, define when DOE contractors experience "extraordinary nuclear occurrences," and manage uranium leases.

The Department is carrying out an Executive Order from President Trump that called for conditional sunset dates for "all regulations" issued by 11 agencies under at least 22 different statutes. If fully implemented, agencies would need to schedule the expiration of thousands of regulations—including rules critical to the continued operation of energy infrastructure—unless individually renewed. A 2025 report from the Institute for Policy Integrity at NYU School of Law warns that this aggressive approach will create a storm of legal violations and practical chaos rather than the targeted deregulation the administration seeks. The Department of Energy's new rule exemplifies that chaos.

Our report reveals multiple ways this mass sunsetting approach violates the Administrative Procedure Act. Adding sunset dates to existing rules constitutes a substantive regulatory change that requires the same rigorous notice-and-comment process and analytical consideration used for the original rules.

Here, DOE has issued a "direct final rule" in an attempt to bypass the public comment process, and has offered virtually no justification for which rules it wants to sunset or why. The sheer scale of the sunsetting envisioned by President Trump's Executive Order also makes compliance nearly impossible, to say nothing of the crippling uncertainty it creates for regulated entities. When the Department of Health and Human Services attempted a similar sunset rule in 2021, the agency estimated it would cost approximately $70 million per year and require 169,500 hours of agency time annually to conduct proper reviews. HHS ultimately repealed the rule, finding it would create "instability, uncertainty, and confusion" while impeding the agency's core mission.

Although DOE's sunset rule is not the first issued under this Executive Order, the breadth of application to substantive rules and the sheer lack of justification of DOE's rule highlights the danger of the widespread sunsetting of regulations that the Executive Order envisions.

Jason A. Schwartz, Regulatory Policy Director at the Institute for Policy Integrity and an author of the analysis, released the following statement:

"As the Department of Energy's sunset rule demonstrates, implementation of President Trump's Sunset Order is creating a legal nightmare for federal agencies and the entities they regulate. The Department's sunset rule is both dangerous and unlawful. It provides for the repeal of national security regulations and does not even follow the proper process for doing so.

You can't just wave a magic wand and sunset dozens of regulations without following the law. Each sunset requires individual justification under specific statutory authorities, detailed consideration of costs and benefits, and meaningful public input. Trying to do this for numerous rules simultaneously will either violate the Administrative Procedure Act, prove completely unworkable, or both. The result will be costly chaos and crippling uncertainty for businesses, not effective deregulation."

Schwartz and other Policy Integrity experts are available for interviews on this issues.

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The Institute for Policy Integrity *at New York University School of Law is a non-partisan think tank dedicated to improving the quality of government decisionmaking. The institute produces original scholarly research in the fields of economics, law, and regulatory policy; and advocates for reform before courts and government agencies.*