

United States Senate

WASHINGTON, DC 20510-0908

February 13, 2024

The Honorable Gene Dodaro
Comptroller General
U.S. Government Accountability Office
441 G Street NW
Washington, D.C. 20548

Dear Comptroller General Dodaro:

On January 26, 2024, the U.S. Department of Energy (DOE) published a statement notifying the public that it “will initiate a process to update the assessments used to inform whether additional liquefied natural gas (LNG) export authorization requests to non-Free Trade Agreement countries are in the public interest ... and until updated, DOE will pause determinations on pending applications for export of LNG to non-Free Trade Agreement countries.”^[1] This statement of policy should be considered eligible under the rules governing the Congressional Review Act (CRA).

With limited exceptions, the CRA defines a “rule” as follows:

“‘[R]ule’ means the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.”^[2]

Based upon this broad definition, the Government Accountability Office has rightly pointed out that “agency pronouncements may be rules within the definition of 5 U.S.C. § 551 and the CRA, even if they are not subject to notice and comment rulemaking requirements under section 553.”

The DOE’s pause in issuing determinations for natural gas export permits for non-Free Trade Agreement countries under the Natural Gas Act is a policy that has not been explicitly agreed to by Congress. Section 3(a) of the Natural Gas Act (15 U.S.C. 717b(a)), which prescribes the DOE’s authority to approve natural gas export permits, states that the DOE shall issue authorizations if they are found to be in the public interest and may grant authorizations with terms and conditions. The statute does not authorize the DOE to unconditionally withhold determinations for undefined periods of time. For these reasons, we respectfully request a

^[1] <https://www.energy.gov/articles/doe-update-public-interest-analysis-enhance-national-security-achieve-clean-energy-goals>

^[2] <https://www.crs.gov/Reports/R45248?source=search>

determination as to whether the pause in question is in-fact a “rule” and is thus reviewable under the CRA.

Thank you for your attention to this important matter.

Sincerely,



Marco Rubio
U.S. Senator



Bill Hagerty
U.S. Senator



Cindy Hyde-Smith
U.S. Senator



Pete Ricketts
U.S. Senator



Dan Sullivan
U.S. Senator



Mike Braun
U.S. Senator



James Lankford
U.S. Senator



Michael S. Lee
U.S. Senator