

April 3, 2017

Energy Update

President Trump Issues Executive Order to Unwind Obama Administration Climate Policies

Overview

On March 28, 2017, President Trump signed an Executive Order directing a number of actions to repeal or revise Obama Administration policies targeting greenhouse gas (GHG) emissions and climate change. It also requires federal departments and agencies to “review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources.” The “Promoting Energy Independence and Economic Growth” Executive Order ([E.O. 13783](#)) was published in the *Federal Register* on March 31.

In his [remarks](#) on the Executive Order, President Trump declared that “today’s energy independence action calls for an immediate reevaluation of the so-called Clean Power Plan...[lifts] the ban on federal leasing for coal production...[and lifts] job-killing restrictions on the production of oil, natural gas, clean coal, and shale energy”.

Under the Administrative Procedure Act, repeal of regulations originally promulgated through the notice-and-comment process by the Obama Administration will require new notice-and-comment processes. Furthermore, in order to withstand court challenges, the agency repealing a regulation must also provide a rational explanation for why the rule is no longer appropriate.

The provisions of the Executive Order include:

Comprehensive Review of Agency Actions

Section 2 of the Executive Order is titled “Immediate Review of All Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources”. The Executive Order requires the “heads of agencies [to]...review all existing regulations, orders, guidance documents, policies, and any other similar 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.” Exempted from this directive are “agency actions that are mandated by law, necessary for the public interest, and consistent with” the Executive Order. To carry out this requirement, agencies must submit plans for conducting the mandated regulatory review to the Director of the Office of Management and Budget (OMB) within 45 days. Within 120 days, agencies are required to provide to the OMB Director, the Vice President, and other

officials, “a draft final report...[that] shall include specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency actions that burden domestic energy production.” The agencies must similarly submit final reports within 180 days. To carry out the recommendations outlined in these reports, agencies must “as soon as practicable, suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding, those actions, as appropriate and consistent with law.”

Obama Executive Actions

Section 3 of the Executive Order directly repeals the following Executive Order and memoranda issued by President Obama:

- “Preparing the United States for the Impacts of Climate Change” ([Executive Order 13653](#));
- “The Presidential Memorandum of June 23, 2013 (Power Sector Carbon Pollution Standards)”;
- “The Presidential Memorandum of November 3, 2015 (Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment)”;
- “The Presidential Memorandum of September 21, 2016 (Climate Change and National Security)”.

CEQ NEPA Guidance

The Executive Order also directs the Council on Environmental Quality (CEQ) to repeal the “Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews”. The CEQ published this [final guidance](#), which applied to federal agencies conducting environmental reviews under the National Environmental Policy Act (NEPA). CEQ stated that the guidance was intended to “assist Federal agencies in their consideration of the effects of...GHG...emissions and climate change when evaluating proposed Federal actions in accordance with...NEPA”.

Clean Power Plan and New Source Performance Standards for Power Plants

In its potentially most significant action, the Executive Order directs the Administrator of the Environmental Protection Agency (EPA) to “immediately take all steps necessary to review”: the Clean Power Plan; New Source Performance Standards (NSPS) for GHG emissions from new or reconstructed power plants; and the proposed rule titled “Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units”:

- **Clean Power Plan:** The EPA published the [final rule](#) establishing the “Clean Power Plan”, officially titled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units”, on October 23, 2015. The regulations would have restricted GHG emissions from existing fossil fuel electric generating facilities. States were to play a central role in implementing the Clean Power Plan, however the program would have been enforced by the EPA, through imposition of a Federal Implementation Plan (FIP) for any state that failed to meet the requirements of the regulations. The Clean Power Plan directed states to take actions reducing GHG emissions from existing power plants by 32 percent below 2005 levels by 2030. The Supreme Court issued an order staying implementation of the Clean Power Plan in February, 2016.

- ***GHG NSPS:*** The EPA published the [final rule](#) titled “Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units” on October 23, 2015. The final rule imposed requirements for employing the “Best System of Emission Reduction” (BSER) and emissions limits for new or modified power plants. These BSER requirements effectively prohibited the construction of new coal-fired power plants that did not employ carbon capture and storage technology.
- ***Model Federal Implementation Plan Proposed Rulemaking:*** The EPA published the [notice of proposed rulemaking \(NPRM\)](#) titled “Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2015; Model Trading Rules; Amendments to Framework Regulations” on October 23, 2015.

In addition, Section 4(d) of the Executive Order states that the “Attorney General may, as appropriate” request a stay or delay in any litigation related to these rules.

Social Cost of Carbon

The Executive Order directs the dissolution of the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG) and withdraws documents issued by the IWG. The Executive Order declares that these documents are “no longer representative of governmental policy”.

Moratorium on Coal Leasing on Federal Lands

The Executive Order directs the Secretary of Interior to “take all steps necessary and appropriate to amend or withdraw” the federal moratorium on issuing new leases for coal mining on federal lands. Secretary of Interior Sally Jewell imposed the moratorium through [Order No. 3338](#), which she issued on January 15, 2016. The 2016 secretarial order directed the Bureau of Land Management (BLM) “to prepare a discretionary Programmatic Environmental Impact Statement (PEIS) that analyzes potential leasing and management reforms to the current Federal coal program.” The order noted that “[c]ontinuing to conduct lease sales or approve lease modifications during this programmatic review risks locking in for decades the future development of large quantities of coal under current rates and terms that the PEIS may ultimately determine to be less than optimal”, and therefore imposed a moratorium on new leases while the BLM developed the PEIS. Secretary of Interior Ryan Zinke issued an order rescinding Order No. 3338 on March 29, 2017.

EPA and Department of Interior Oil and Gas Regulations

Section 7 of the Executive Order directs the EPA Administrator and the Secretary of Interior to review regulations affecting oil and gas development and “as soon as practicable, suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding” the regulations. The regulations identified for this action are:

- ***New Source Performance Standards for Oil and Gas Sector Methane Emissions:*** On June 3, 2016 the EPA published the [final rule](#) titled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources”. The final rule imposed significant new requirements

for the oil and gas industry, including producers and natural gas pipeline operators, to identify and limit methane emissions.

- ***Hydraulic Fracturing on Federal Lands:*** On March 26, 2015, the BLM published the [final rule](#) titled “Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands”. On September 30, 2015, the U.S. District Court for the District of Wyoming issued a [preliminary injunction](#) blocking implementation of the regulations, and on June 21, 2016, issued an [order](#) setting aside the rule. On March 15, 2017, the BLM filed a motion with the U.S. Court of Appeals for the 10th Circuit stating that it would issue a new NPRM by June 13, 2017.
- ***Non-Federal Oil and Gas Rights:*** The National Park Service (NPS) published a [final rule](#) titled “General Provisions and Non-Federal Oil and Gas Rights” on November 4, 2016, and the Fish and Wildlife Service (FWS) published a [final rule](#) titled “Management of Non-Federal Oil and Gas Rights” on November 14, 2016.
- ***BLM Venting and Flaring Rule:*** On November 18, 2016, the BLM published the [final rule](#) titled “Waste Prevention, Production Subject to Royalties, and Resource Conservation”. As described by the BLM, the regulations were intended “to reduce waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities on onshore Federal and Indian...leases”.

Implementation of the Executive Order

On March 29, Secretary of Interior Ryan Zinke issued two secretarial orders:

- ***Department-Wide Policy Review, BLM Venting and Flaring Rule:*** [Secretarial Order 3349](#) “implements the review of agency actions directed by an Executive Order signed by the President on March 28, 2017.” The order includes a range of directives to implement E.O. 13783, including requiring “each bureau and office [to] review all existing regulations, orders, guidance documents, policies, instructions, notices, implementing actions, and any other similar actions...and, to the extent deemed necessary and permitted by law, initiate an appropriate process to suspend, revise, or rescind any such actions, consistent with the policies set forth in the March 28, 2017 E.O.” The order also requires the BLM Director to, within 21 days, “review the final rule entitled, ‘Waste Prevention, Production Subject to Royalties, and Resource Conservation,’...and report to the Assistant Secretary - Land and Minerals Management on whether the rule is fully consistent with the policy set forth...” in E.O. 13783. The order directs a number of other agency actions, including 21-day reviews of the NPS “General Provisions and Non-Federal Oil and Gas Rights” final rule, and the FWS “Management of Non-Federal Oil and Gas Rights” final rule.
- ***End of Coal Lease Moratorium:*** As described in a Department [press release](#), [Secretarial Order 3348](#) “overturns the 2016 moratorium on all new coal leases on federal land and ends the programmatic environmental impact statement that was set to be completed no sooner than 2019.”

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