

April 19, 2017

Energy Update

EPA Initiates Regulatory Review in Response to Executive Order

Overview

On April 13, the Environmental Protection Agency (EPA) published a [notice](#) in the *Federal Register* soliciting public comments “on regulations that may be appropriate for repeal, replacement, or modification.” The notice is part of the EPA’s efforts to implement the Executive Order titled “Enforcing the Regulatory Reform Agenda” ([E.O. 13777](#)), which was signed by President Trump on February 24, 2017. The deadline for submitting public comments is May 15, 2017, which can be submitted to [Docket EPA-HQ-OA-2017-0190](#). EPA offices will also be conducting public forums on regulatory reform over the next four weeks. The Executive Order establishes mechanisms intended to reduce regulations, including by implementing the President’s January 30, 2017 Executive Order ([E.O. 13771](#)) which calls for agencies to eliminate two regulations for each new regulation they promulgate.

The provisions of E.O. 13777 include requiring each federal agency to:

- Designate a Regulatory Reform Officer (RRO) who will “oversee the implementation of regulatory reform initiatives and policies to ensure that agencies carry out regulatory reforms...”; and
- “[E]stablish a Regulatory Reform Task Force” (RRTF), which will include the Regulatory Reform Officer, the agency’s Regulatory Policy Officer, and “a representative from the agency’s central policy office or equivalent central office”.

The Executive Order directs each RRTF to “evaluate existing regulations...and make recommendations to the agency head regarding their repeal, replacement, or modification...” The RRTFs are instructed to identify regulations that:

- “...eliminate jobs, or inhibit job creation;”
- “...are outdated, unnecessary, or ineffective;”
- “...impose costs that exceed benefits;”
- “...create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies;”
- conflict with statutory requirements governing the quality of data disseminated by federal agencies;¹ and

¹ Section 3(d)(v) of the Executive Order cites “section 515 of the Treasury and General Government Appropriations Act, 2001 ([44 U.S.C. 3516 note](#))”, which directs the “...Director of the Office of Management and Budget...by not later than September 30, 2001, and with public and Federal agency involvement, [to] issue guidelines under sections 3504(d)(1) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity,

- “derive from or implement Executive Orders or other Presidential directives that have been subsequently rescinded or substantially modified.”

E.O. 13777 also requires each RRTF to:

- Solicit “input and other assistance, as permitted by law, from entities significantly affected by Federal regulations, including, State, local, and tribal governments, small businesses, consumers, non-governmental organizations, and trade associations”;
- “...[P]rioritize, to the extent permitted by law,...regulations...identified as being outdated, unnecessary, or ineffective...” for repeal in implementing the regulatory repeal requirements of the January 30, 2017 Executive Order;
- Report to the agency head within 90 days, and on set schedule thereafter, “the agency’s progress...[in]...improving implementation of regulatory reform initiatives and policies...[and] identifying regulations for repeal, replacement, or modification.”

March 24th EPA Memo

On March 24, EPA Administrator Scott Pruitt issued a [memo](#) announcing the designation of Samantha Davis, Senior Counsel and Associate Administrator for Policy, as the EPA’s Regulatory Reform Officer. The memo also announced that Pruitt’s Chief of Staff Ryan Jackson would serve as Chairman of the Regulatory Reform Task Force. Other RRTF members include: Byron Brown, Deputy Chief of Staff for Policy; and Brittany Bolen, Office of Policy Deputy Associate Administrator. The memo also directs the EPA’s Offices of Air and Radiation, Land and Emergency Management, Chemical Safety and Pollution Prevention, Environmental Information, Congressional and Intergovernmental Relations, and Small and Disadvantaged Businesses to “provide the Task Force with recommendations regarding specific rules that should be considered for repeal, replacement or modification.” The memo also directs “regional and headquarters offices...[to] provide their recommendations to the Task Force by May 15.”

Public Outreach and Meetings

The EPA has posted a [Regulatory Reform page](#), which includes a schedule of public outreach events:

- On April 24, the Office of International and Tribal Affairs will host an outreach call with tribal representatives;
- On April 25, the Office of Small and Disadvantaged Business Utilization will hold a [public meeting](#) “to consult with our external stakeholders, to hear which rules and regulations our stakeholders believe should be repealed, replaced, or modified, consistent with applicable law”;
- On April 26, the Office of Water is scheduled to meet with water associations, including the Environmental Council of States (ECOS), the Association of California Water Agencies (ACWA), the Association of State Drinking Water Administrators (ASDWA), and the Groundwater Protection Council (GWPC).
- On May 2, the Office of Water is schedule to hold a “virtual listening session for the public”; and
- On May 9, the Office of Land and Emergency Management (OLEM) will host a public meeting.

utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act.”

Energy Independence and Economic Growth Executive Order Implementation

The EPA has also initiated its review of greenhouse gas (GHG) regulations pursuant to the “Promoting Energy Independence and Economic Growth” Executive Order ([E.O. 13783](#)) signed by the President on March 28. On April 4, the EPA published the following in the *Federal Register*:

- **Clean Power Plan:** A [notice](#) announcing that “it is reviewing the Clean Power Plan...and, if appropriate, will as soon as practicable and consistent with law, initiate proceedings to suspend, revise or rescind this rule.” The notice also declares that “[i]f EPA’s review concludes that suspension, revision or rescission of this Rule may be appropriate, EPA’s review will be followed by a rulemaking process that will be transparent, follow proper administrative procedures, include appropriate engagement with the public, employ sound science, and be firmly grounded in the law.” 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.
- **Electric Generating Units New Source Performance Standards (NSPS):** A [notice](#) announcing that “it is reviewing and, if appropriate, will initiate proceedings to suspend, revise or rescind the Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Generating Units.” The EPA published the [final rule](#) on October 23, 2015. The 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.
- **Oil and Gas Sector NSPS:** A [notice](#) announcing that the EPA is “reviewing the 2016 Oil and Gas New Source Performance Standards and, if appropriate, will initiate reconsideration proceedings to suspend, revise or rescind this rule.” On June 3, 2016 the EPA published the [final rule](#) titled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources”. As described by an EPA [fact sheet](#), the final new source rule sets “emissions limits for methane...emitted by equipment and processes in the oil and gas sector.” The final rule requires emissions reductions for: oil and gas wells; natural gas processing plants; natural gas storage; and natural gas pipelines. The rule directs owners and operators of hydraulically fractured wells to implement reduced emissions completions. Prior to implementing these reduced emissions completions, owners and operators of covered wells are required to “reduce emissions using combustion controls.”

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