

OnePoint Alert



April 14, 2017

Climate Change Update- Energy Independence Executive Order Rescinding Climate Change Mitigation Directives, Directing Review of Clean Power Plan, and Allowing Coal Mining on Federal Lands

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On March 28, 2017, President Donald Trump signed an executive order to promote energy independence and economic growth. The order seeks to encourage energy production from coal and other domestic sources while “avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.” The order also rescinds numerous actions by the Obama Administration aimed at addressing climate change.

Under the order, the Clean Power Plan (CPP) must be reviewed by EPA to determine whether to initiate a new notice-and-comment rulemaking to suspend, revise, or rescind the plan. The Justice Department filed with the D.C. Circuit Court of Appeals a request on March 28, 2017 to hold in abeyance the CPP litigation while EPA reconsiders the rule. The Clean Power Plan itself was stayed by the Supreme Court on February 10, 2017 pending resolution of issues raised by challengers, including by Scott Pruitt, who was at the time of filing the Attorney General of Oklahoma and is now the Administrator of EPA. As of the date of the stay, several states in the northeast and along the Pacific coast reportedly planned to continue their efforts to reduce greenhouse gas emissions as specified in the CPP. EPA began implementing the executive order with a trio of announcements on April 4, 2017 indicating review of the CPP, new source performance standards for electric generating units, and oil and gas new source performance standards. 82 Fed. Reg. 16329, 82 Fed. Reg. 16330, and 82 Fed. Reg. 16331.

The order requires federal agencies to review regulations burdening the development or use of energy resources in the United States and requires agencies to consider costs of their regulations when permissible. The order calls for the review, and potential rescission or rewriting, of regulations aimed at reducing methane emissions from oil and gas operations. The timing for the review is ambitious. Agency heads must draft plans for regulatory review and submit their plans to OMB Director Mick Mulvaney by May 11th and provide draft reports to Vice President Mike Pence and others within the Administration by July 25th on the actions taken to carry out the review, along with specific recommendations for changes to regulations, policies, and other actions to alleviate burdens on domestic energy production. By September 24th, the agencies must make those draft plans final. The changes identified in the final reports are to be made as soon as practicable.

Leasing on federal lands for coal mining, and for oil and natural gas development is provided for under the executive order, which rescinds the moratorium on such activities put in place by the prior administration.

Under the order, agencies are not to attempt to quantify the social cost of climate change. Whether this change will affect reviews under the National Environmental Policy Act (NEPA) is a topic of debate among commenters.

Regulatory changes to implement the executive order are expected to take one to two years to put in place, and to be followed by litigation relating to what constitutes a regulation that “unnecessarily encumbers” the economy, the science underlying the changes, and considerations of cost in regulations, among other issues. Further executive action, such as withdrawal from the Paris Agreement on climate change, is currently uncertain.

The order revokes the following executive orders, reports, and guidance:

- Executive Order 13653 of November 1, 2013 (Preparing the United States for the Impacts of Climate Change);
- The Presidential Memorandum of June 25, 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);
- The Report of the Executive Office of the President of June 2013 (The President’s Climate Action Plan);
- The Report of the Executive Office of the President of March 2014 (Climate Action Plan Strategy to Reduce Methane Emissions); and
- 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, which is referred to in Notice of Availability, 81 Fed. Reg. 51866 (Aug. 5, 2016).

The order calls for the review, and potential rescission or rewriting, of regulations aimed at reducing methane emissions from oil and gas operations including:

- Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources, 81 Fed. Reg. 35824 (June 3, 2016);
- Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands, 80 Fed. Reg. 16128 (Mar. 26, 2015);
- General Provisions and Non-Federal Oil and Gas Rights, 81 Fed. Reg. 77972 (Nov. 4, 2016);
- Management of Non-Federal Oil and Gas Rights, 81 Fed. Reg. 79948 (Nov. 14, 2016); and
- “Waste Prevention, Production Subject to Royalties, and Resource Conservation, 81 Fed. Reg. 83008 (Nov. 18, 2016).

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