

March 29, 2017

President Donald J. Trump signed his much anticipated [Executive Order on Promoting Energy Independence and Economic Growth](#) on Tuesday, March 28, 2017. As expected, the Executive Order requires the consideration of economic effects in connection with environmental regulations, and promotes the use of fossil fuels in the nation's energy mix.

The Executive Order requires the Environmental Protection Agency (EPA) and other affected executive agencies to "immediately review existing regulations that potentially burden the development or use of domestically produced energy resources" and suspend, revise, or rescind regulations that "unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law." The Executive Order also requires that environmental regulations must produce benefits that outweigh their costs, and be "developed through transparent processes that employ the best available peer-reviewed science and economics."

The Executive Order principally takes aim at the EPA'S Clean Power Plan rulemaking (CPP), as well as all related rules and guidance issued by EPA, although it affects all agency regulations deemed potentially burdensome to domestic energy production. In addition, the Executive Order lifts restrictions on federal land coal leasing activities and related EPA emission standards. Key provisions of the Executive Order are outlined below:

EPA Directed to Review Clean Power Plan

The EPA Administrator is directed to "immediately . . . take all steps necessary to review" the CPP for consistency with the new policy and, if appropriate, "as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding" the CPP. This directive also applies to any rules and guidance issued pursuant to the CPP, including EPA's legal memorandum published in conjunction with the CPP. The Executive Order further directs EPA to file a motion with the D.C. Circuit to stay the pending CPP appeal, pending completion of these required actions.

EPA Initiates Action on CPP

Also on Tuesday, EPA took two key steps in light of the Executive Order's direction on the CPP:

1. EPA has filed a motion to hold the CPP appeal (pending before the D.C. Circuit) in abeyance until completion of any new EPA rulemaking initiated to revise or rescind the current CPP regulations. EPA argued that agencies are permitted by law (when a new Administration is seated) to rethink current and pending rules, and EPA is reconsidering the CPP in light of the Executive Order. No petitioner in that case opposed the motion, but several parties supporting EPA indicated that they will file objections.
2. EPA's motion included a pre-federal register publication version of an advanced notice of proposed rulemaking, signed by the EPA Administrator, which indicates that EPA will immediately begin its review of the CPP and related regulations and guidance. The notice indicated that EPA will review existing compliance deadlines and set new ones that are "reasonable and appropriate in light of the Supreme Court stay of the CPP and other factors."

The EPA's notice outlined several substantive questions for reconsideration in a future rulemaking proceeding revising the CPP: "whether [the CPP] and alternative approaches are appropriately grounded in EPA's statutory authority and consistent with the rule of law;" would "respect the authority and powers that are reserved to the states;" protect "public health and welfare while also supporting economic growth and

job creation;" "maintain the diversity of reliable energy resources and encourage the production of domestic energy sources to achieve energy independence and security;" and "whether [new rules] will provide benefits that substantially exceed their costs."

At the conclusion of this initial review, EPA is expected to issue a new proposed rule that will modify the existing CPP and invite public comment on these issues. It is unclear when this initial review will be completed, and when EPA's proposed and final rules will issue.

COMPREHENSIVE REVIEW OF AGENCY ACTIONS ON CLIMATE & RESOURCES DIRECTED

The Executive Order also enacts a suite of directives aimed at various executive agencies, with a goal of promoting production of domestic fossil fuel resources. These include:

Review of Agency Actions that May Burden Development of Domestic Energy Resources

Agencies must review their regulations to determine whether any delay or impose significant costs on "the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear resources." Within 180 days, agencies shall provide recommendations for alleviating burdensome agency actions, to be followed by revision or rescission of such rules, or modification through rulemaking.

Rescission of Energy and Climate-Related Presidential and Regulatory Actions

The Executive Order rescinds various Executive Orders, presidential memoranda and reports related to President Obama's Climate Action Plan and related guidance documents, including guidance that required federal agencies to incorporate greenhouse gas emissions and effects of climate change into their regulatory analysis. Agencies must also revise, rescind, or institute rulemakings to revise regulations adopted under such guidance.

Review of Estimates of Social Cost of Carbon for Regulatory Impact Analysis

Agencies must "use estimates of costs and benefits in their regulatory analyses that are based on the best available science and economics." To this end, the Executive Order disbands the Interagency Working Group on Social Cost of Greenhouse Gases, and withdraws several technical support documents examining the social cost of carbon for regulatory impact analysis.

Lifting of Federal Land Coal Leasing Moratoria

The Secretary of Interior must lift any moratoria on federal land coal leasing activities. EPA must review its emission standards and other rules related for oil and gas leases on federal lands, and suspend, revise or rescind these standards and rules, or initiate rulemakings to do so. The Attorney General must move for stay or otherwise delay any litigation related to these rules pending further agency action.

Other Required Actions

The balance of the Executive Order requires all federal agencies to review their rules to determine whether any implemented in accordance with President Obama's Climate Action Plan should be revised or rescinded to the extent they burden the development of domestic energy resources.

For more information on this Executive Order, please contact one of the attorneys listed below or the Stinson Leonard Street contact with whom you regularly work.

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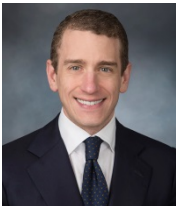
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