

Client Alert

Energy

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President Trump's Day-One Executive Orders: Energy and Environment

EXECUTIVE SUMMARY

On January 20, 2025, President Trump issued several Executive Orders and memoranda (the "EOs") signaling a significant policy shift favoring robust and market-based energy production (mostly relying on fossil fuels), while seeking to streamline project permitting and reduce environmental review delays that frequently impede project development efforts. The EOs also reflect the President's desire to de-emphasize government support for the development of certain technologies (such as wind and solar) in favor of fossil fuels and other natural resources.

The EOs are not self-executing. They will therefore not immediately ease permitting logjams, but rather direct and empower agencies to use all means available to them, including emergency-related authorities, to fulfill the Administration's policy goals. They will also not affect the availability of investment tax credits ("ITCs") and production tax credits ("PTCs") under the Internal Revenue Code of 1986, as amended, for eligible projects, such as the Section 45V PTC for clean hydrogen production, the Section 45Q credit for carbon sequestration, and technology neutral credits under Sections 45Y and 48E relevant to wind, solar, storage and other technologies.

We expect new regulations and other actions to be proposed and eventually adopted by agencies in the coming weeks and months that will implement the policies behind these EOs and will affect the interests of all stakeholders in the energy industry. In addition, there may be legislative changes introduced through ongoing discussions leading to one or more Reconciliation bills (through a process enabling Congress to enact legislation focused on revenues and spending reductions with simple majority votes). These discussions could impact energy-related interests, including the fate of tax credits authorized under the Inflation Reduction Act such as those mentioned above.

We will update you on these developments as they continue to unfold. In the interim, please do not hesitate to reach out to us if you have any questions about the impact of the measures taken thus far, and what may lie ahead.

Three of the EOs are summarized in more detail below:

EO DECLARING A NATIONAL ENERGY EMERGENCY

This EO provides a wide-ranging federal response to what the incoming Administration has positioned as energy challenges, emphasizing the role of domestic energy production in enhancing national security and promoting economic stability. While the President's declaration of a national emergency pursuant to the National Emergencies Act does not by itself change existing policies and regulations, it unlocks authority for various federal agencies to expedite their review and approval of energy projects. Moreover, the deadlines for action and accompanying reporting requirements described below provide important benchmarks that the White House can use to hold agencies accountable for making timely progress to fulfill the mandates of the EO.

Along those lines, the EO invokes a number of statutory tools that will be used to further its goals, including the Defense Production Act ("DPA"), Clean Water Act and Endangered Species Act ("ESA"). By invoking emergency authorities and the regulatory flexibility the permit, the Energy Emergency EO aims to:

1. Increase domestic energy production capacity and reduce dependence on foreign sources of energy resources;
2. Strengthen infrastructure in vulnerable regions;
3. Enhance interagency coordination to streamline project approvals; and
4. Address regulatory and permitting delays hindering energy development.

Notably, it would seem difficult for environmental NGOs and other stakeholders opposed to these efforts to challenge the EO directly. More likely, when agencies take implementing actions to expedite review of permitting requirements and project approvals, environmental NGOs will bring litigation challenging the legality of those actions.

Key Provisions

Section 1: Declaration of National Emergency

The President officially declared a national emergency to address vulnerabilities in U.S. energy infrastructure and supply. The EO states that failure to act promptly will lead to further destabilization of the U.S. energy systems due to increasing energy demand and inadequate infrastructure to support emerging technologies.

The EO focuses particularly on the Northeast and West Coast regions, declaring that energy-related vulnerabilities in them have a disproportionate impact on national security and economic stability.

Section 2: Emergency Approvals

The EO empowers federal agencies to take immediate action under existing legal authorities. Key directives include:

1. Identification and Utilization of Emergency Authorities:

Agencies are tasked with identifying and using emergency authorities to expedite energy-related projects, including resource leasing, site development, production, transportation, refining, and energy generation. These actions are aimed at increasing domestic energy production capacity.

2. Eminent Domain and DPA:

Agencies are authorized to recommend the use of eminent domain or the authorities granted by the DPA to overcome barriers to the realization of critical energy projects.

Recommendations for the invocation of DPA authorities must be submitted to the President through the National Security Advisor.

3. Emergency Fuel Waivers:

The Environmental Protection Agency (EPA), in consultation with the Department of Energy, is instructed to issue emergency waivers under the Clean Air Act to permit the year-round sale of E15 gasoline (a gasoline/biofuel mixture that is cleaner burning than regular gasoline, but is not generally authorized for sale during the summer months because of air emissions impacts).

Section 3: Expediting Energy Infrastructure Development

Federal agencies are mandated to streamline the completion of energy infrastructure projects, with a focus on mitigating regional vulnerabilities. Agencies are required to:

1. Accelerate Infrastructure Approvals:

Utilize emergency authorities and any other powers they possess to expedite all authorized infrastructure, environmental, and natural resource projects within their jurisdictions.

2. Prioritize Key Regions:

Utilize emergency authorities and any other powers they possess to address specific vulnerabilities in the West Coast, the Northeast, and Alaska, which are critical to national security and energy resilience.

3. Regular Reporting:

Submit regular progress reports to senior White House officials, including the Assistant to the President for Economic Policy, ensuring oversight and accountability.

Section 4: Emergency Permitting Under the Army Corps of Engineers

The EO instructs the Secretary of the Army, through the Assistant Secretary of the Army for Civil Works, to expedite permitting processes under statutes like the Clean Water Act and Rivers and Harbors Act. Specific directives include:

1. Streamlined Permitting:

Agencies must identify actions subject to emergency treatment under existing regulatory frameworks and provide a comprehensive summary report of such potential actions within 30 days.

2. Ongoing Status Reports:

Agencies must provide detailed status updates every 30 days, outlining progress, challenges, and newly identified actions.

3. Interagency Collaboration:

The Army Corps and EPA must coordinate closely to ensure efficient use of emergency permitting provisions, enabling timely project execution.

Section 5: ESA Emergency Consultation

To prevent regulatory delays under the ESA, this section directs agencies to prioritize consultations for energy projects. Key requirements include:

1. Emergency ESA Consultations:

Agencies must identify energy projects subject to emergency consultations under ESA regulations (50 C.F.R. § 402.05) and provide a summary report within 30 days. Agencies are further required “to the maximum extent permissible under applicable law” to use these emergency consultations to facilitate the nation’s energy supply.

2. Regular Status Updates:

Agencies are required to submit periodic reports detailing actions taken, the status of projects, and new opportunities for emergency consultations.

3. Interagency Cooperation:

The Department of the Interior and Department of Commerce must ensure that relevant officials, such as the Director of the Fish and Wildlife Service and Assistant Administrator for Fisheries, are available for prompt consultations to address project requirements.

Section 6: Convening the Endangered Species Act Committee

This section outlines steps to address regulatory obstacles posed by ESA provisions:

Quarterly Meetings:

The ESA Committee, chaired by the Secretary of the Interior, must convene at least quarterly to review exemption applications and other regulatory issues affecting energy projects.

1. Expedited Reviews:

Applications for ESA exemptions must be reviewed within 20 days of submission, with final resolutions delivered within 140 days.

2. Regulatory Reform:

The Committee is tasked with identifying procedural and regulatory improvements to minimize energy infrastructure delays caused by ESA or Marine Mammal Protection Act compliance.

Section 7: Coordinated Infrastructure Assessment

The EO directs the Department of Defense (“DoD”) to assess its energy needs and vulnerabilities with a view towards addressing vulnerabilities in energy infrastructure supporting DoD activities. Key actions include:

3. Energy Security Assessment:

The DoD, in collaboration with the Departments of Energy and Interior, must evaluate its ability to acquire and transport energy resources for homeland defense and overseas operations.

4. Infrastructure Recommendations:

The assessment must identify vulnerabilities in energy resource transportation and refining infrastructure, particularly in the Northeast and West Coast, and recommend specific actions to address them.

5. Construction Authority:

The Secretary of the Army may undertake infrastructure projects necessary to mitigate identified vulnerabilities by invoking emergency construction authority under 10 U.S.C. § 2808.

Section 8: Definitions

The EO defines “energy” and “energy resources” to mean crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. 1606 (a)(3). Notably absent from the definition are wind, solar and hydrogen resources.

EO ON UNLEASHING AMERICAN ENERGY

This EO declares that the U.S. will make a significant policy shift favoring energy sector deregulation and a market-driven energy mix. The EO’s stated objective is to enhance promotion of energy independence, economic growth, and resilience by prioritizing affordable and reliable energy. Overall, the EO signals an emphasis in policy going forward under this Administration to support robust energy development and production. As with the EO declaring a National Energy Emergency, this EO calls particular attention to certain energy resources (oil, natural gas, coal, hydropower, biofuels, critical minerals, and nuclear energy) and does not address wind, solar and (other than implicitly as a gas derivative, in its “blue” or “turquoise” forms) hydrogen.

Key Provisions

Section 2: Policy Objectives

The EO establishes several policy priorities:

- 1. Energy Exploration and Production:**
Encouraging resource development on federal lands and waters to secure energy leadership.
- 2. Non-Fuel Minerals:**
Advancing domestic production of critical minerals like rare earth elements to create jobs, enhance supply chains, and counter global adversaries.
- 3. Energy Accessibility:**
Ensuring the availability of reliable energy supplies across all states and territories to bolster national security.
- 4. Regulatory Clarity:**
Grounding all energy-related regulations in clear legal mandates.
- 5. Consumer Choice in Vehicles:**
Eliminating perceived biases toward electric vehicles (EVs) through regulatory reform, promoting consumer freedom, and addressing subsidies that may distort the market.
- 6. Appliance and Goods Freedom:**
Safeguarding access to various consumer goods, fostering market competition, and encouraging innovation.
- 7. Global vs. Domestic Effects:**
Prioritizing the interests of U.S. citizens in regulatory decision-making by distinguishing domestic impacts from global considerations.
- 8. Public and Scientific Accountability:**
Requiring robust public engagement and scientific review for agency decisions.
- 9. Federal Funding Alignment:**
Mandating that federal expenditures adhere to the principles outlined in this policy framework.

Section 3: Review and Revision of Existing Agency Actions

Federal agencies must conduct a comprehensive review of their policies, regulations, and actions to identify and eliminate barriers to domestic energy resource development. This process emphasizes:

- **Scope:** Targeting all energy sectors, including oil, natural gas, coal, hydropower, biofuels, nuclear, and critical minerals, as well as consumer choice in vehicles and appliances.
- **Action Plan:** Agencies must submit and implement plans to rescind or revise burdensome policies within 30 days.
- **Litigation Coordination:** Agencies and the Department of Justice will work together to delay or resolve litigation related to identified policies that may be subject to modification.

Section 4: Revocation of Prior Climate and Energy Policies

This section repeals multiple executive orders and initiatives enacted from 2021 onwards, including policies addressing climate change, clean energy, environmental justice impact reviews and sustainability. Specifically:

- Key orders focusing on climate action, such as EO 13990 and EO 14008, are revoked.
- Programs like the American Climate Corps are terminated, and their associated resources reallocated.
- Agencies must halt any activities or contracts associated with rescinded initiatives and ensure compliance with this directive.

Section 5: Streamlining Energy Permitting

The order calls for efficiency in the permitting process for energy projects:

- **NEPA Revisions:** Revokes the EO from 1977 that provided the Council on Environmental Quality (“CEQ”) authority to develop National Environmental Policy Act (“NEPA”) regulations and further orders CEQ within 30 days to provide near-term guidance to agencies on NEPA implementation with a working group to follow to develop long-term regulations that would expedite project approvals.
- **General Permitting:** Agencies are directed to use streamlined mechanisms such as general permits and emergency authorities to accelerate critical energy infrastructure projects.
- **Legislative Recommendations:** Agencies must develop proposals to Congress for facilitating interstate energy projects and simplifying judicial reviews.

Section 6: Enhancing Environmental Analysis Accuracy

The order demands rigorous scientific methods and legislated standards for environmental assessments:

- Disbands the Interagency Working Group on the Social Cost of Greenhouse Gases and eliminating its methodologies.
- Revises greenhouse gas valuation approaches to align with economic and legislative considerations.

- Ordering the EPA within 60 days to issue guidance addressing inadequacies in existing "social cost of carbon" calculations and considering the removal of such calculations from federal decision-making. Other agencies are to review and to make appropriate conforming changes to their regulations that incorporate or rely on social cost of carbon calculations.

Section 7: Halt and Review of Climate-Related Funding

The order suspends disbursement of funds tied to recent climate and infrastructure legislation, including funding in support of electric vehicle infrastructure, until reviewed for alignment with the new policy. Specific provisions include:

- Requiring agency heads to submit written reports to the White House that include recommendations for furthering the goals outlined in Section 2 prior to any continued disbursement of funds under these programs.
- Reassessing procurement and funding priorities to emphasize cost-effectiveness and American economic interests, including American workers and businesses.

Section 8: Energy Exports and National Security

Prioritizing energy exports, particularly exports of liquefied natural gas ("LNG"), as a tool for implementing economic and geopolitical strategy:

- Resuming reviews of LNG export applications as expeditiously as possible with an emphasis on their domestic economic and employment benefits.
- Streamlining approval processes for deepwater LNG ports, balancing environmental and national security considerations.

Section 9: Restoring Mineral Dominance

Recognizing the importance of critical minerals, this section outlines steps intended to bolster domestic mining and processing:

- Agency Action: Revising or rescinding burdensome regulations affecting mineral extraction and processing.
- Geological Mapping: Expanding mapping efforts to locate critical mineral deposits.
- National Defense: Strengthening the National Defense Stockpile to ensure supply chain resilience.
- International Trade: Addressing exploitative practices abroad and fostering competitiveness in global mineral markets.

WITHDRAWAL AND REVIEW OF WIND FARM LEASING

This Presidential Memorandum is more targeted and specific than the previously described Eos. It directs a temporary withdrawal of all areas within the Outer Continental Shelf ("OCS") from offshore wind energy leasing, effective January 21, 2025, until this directive is revoked. The memorandum directs that new wind energy leasing be halted, signaling a shift toward stricter environmental and economic evaluations of both onshore and offshore wind projects. The review may reshape federal wind permitting practices, in the name of prioritizing marine and wildlife protection, enhancing energy reliability, and prioritizing economic considerations.

Existing wind energy leases in these areas remain unaffected, but a review will assess their ecological, economic, and environmental validity, with recommendations to be provided to the President. The withdrawal does not apply to activities such as oil, gas, or mineral extraction.

The Memorandum imposes a moratorium on new federal approvals for both onshore and offshore wind projects. Federal agencies, led by the Secretary of the Interior, are tasked with completion of a comprehensive review of leasing and permitting practices. The review will examine environmental and economic impacts, including effects on wildlife (e.g., birds, marine mammals), the intermittent nature of wind energy, and the role of subsidies in the industry's viability.

Agencies are further directed to evaluate the environmental and community costs of defunct and idle windmills, providing recommendations on their removal.

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