



Executive Actions' Impact on Energy, Transportation and Water

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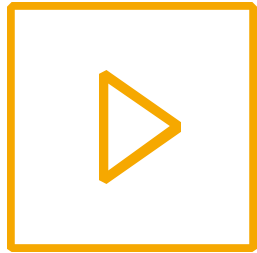
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Before We Begin...



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Webinar Roadmap

- Executive Orders and Presidential Memoranda
- Congressional Action and Litigation
- Department of the Interior Actions
- NEPA and Permitting under latest actions
- Implications for Various Industry Sectors
- Roundtable Discussion

EXECUTIVE ORDERS AND PRESIDENTIAL MEMORANDA



EO 14156:

Declaring a National Energy Emergency

- Declares national energy emergency
- Orders all agencies to use emergency authorities to facilitate production, generation and distribution of domestic energy (e.g., emergency provisions of Clean Water Act and Endangered Species Act)
- Definition of “energy” focuses on traditional energy
- Includes transportation of energy (including but not limited to pipelines)

EO 14154: Unleashing American Energy

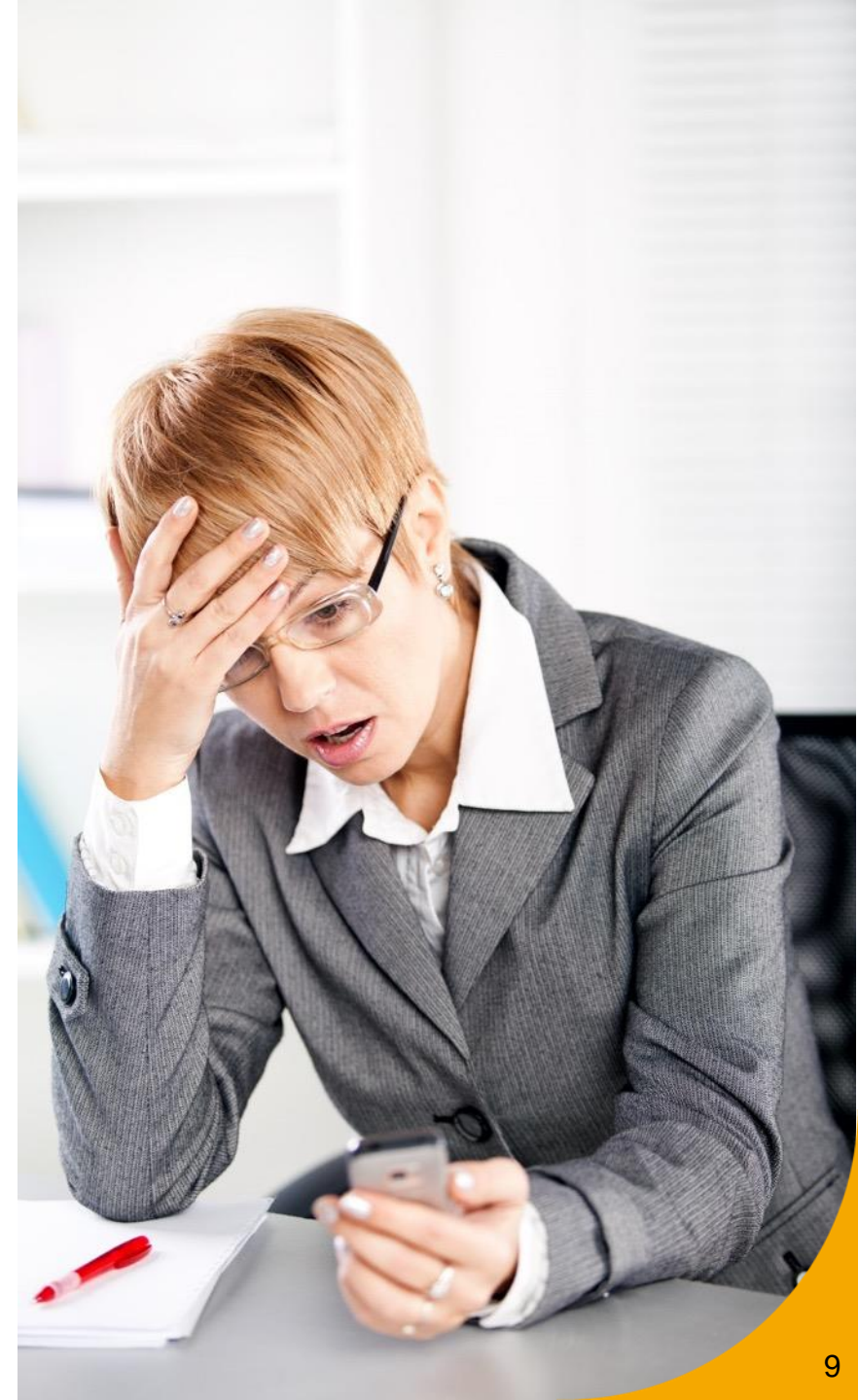
- Gives CEQ 30 days to propose rescission of NEPA regulations and to issue guidance that emphasizes efficiency and certainty
- Requires agencies to eliminate delays in permitting processes, including through expanded use of general permits
- Declares national policy to produce energy on federal lands and waters as a matter of national security
- Rescinds Biden Administration EOs focused on renewable energy
- Prohibits agencies from disbursing funds appropriated through IAJA or IRA (which was later clarified to be narrower in scope)
- Gives agencies 30 days to develop and implement plans to revise or suspend actions unduly burdening energy development

OMB Guidance Responding to “Unleashing American Energy”

- Guidance Regarding Section 7 of the Executive Order Entitled Unleashing American Energy (M-25-11)
 - Clarified that pause on IRA/IIJA funding only applies to funds supporting programs, projects, or activities that may be implicated or contravened by the Executive Order policies and that agencies may still disburse funds after consulting with OMB.
- Memorandum for Heads of Executive Departments and Agencies (M-25-13) (*rescinded*)
 - Directed federal agencies to pause all federal financial assistance
 - Rescinded on January 29, 2025

EO 14148: Initial Rescission of Harmful Executive Orders and Actions

- Rescinds 78 EOs and memoranda issued under Biden Administration including
 - EO 14052 implementing IIJA
 - EO 14082 implementing IRA
 - EOs addressing climate change





EO 14173: Ending Illegal Discrimination and Restoring Merit-based Opportunity

- Prohibits use of diversity, equity, inclusion and accessibility considerations in federal programs and decision-making
- Rescinds EO 12898, issued by President Clinton, which underpins environmental justice initiatives

EO 14158: Establishing and Implementing the President's "Department of Government Efficiency"

- Establishes DOGE
- Requires highest ranking official within each agency to establish DOGE team
- DOGE team must include at least four employees including
 - Team lead
 - Engineer
 - Human resource specialist
 - attorney
- DOGE team must implement DOGE agenda (not yet available)

Presidential Memorandum: Regulatory Freeze Pending Review

- Prohibits agencies from proposing or issuing new rules or guidance
- Prohibits sending rules and guidance to the Federal Register
- Requires withdrawal of any rules sitting at OIRA
- Recommends postponing effective date of final rules by 60 days for rules not yet in effect
- No date given for lifting the freeze

Presidential Memorandum: Hiring Freeze

- Suspends hiring of most civil employees
- Gives OMB Director 90 days to submit plan to reduce federal workforce



Presidential Memorandum: Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects

- Prohibits federal agencies from issuing any new or renewed approvals for onshore or offshore wind projects until assessment of the economic and environmental impacts of wind is completed.
- Mandates temporary withdrawal of offshore areas from offshore wind leasing
- No timeline given for completing assessment

CONGRESSIONAL ACTION AND LITIGATION



Emergency Joint Resolution to Terminate EO 14156 Declaring a National Energy Emergency

S.J.Res. 10

- Introduced on February 3, 2025 by Senators Tim Kaine and Martin Heinrich
- Introduced as “privileged” joint resolution, which requires Senate vote within three weeks
- Bill sponsors concerned that the EO prioritizes expansion of fossil fuels at the expense of renewable energy
- Would invalidate the National Energy Emergency EO



Cases Challenging OMB Freeze Memo

- Two courts have halted freeze of federal funds disbursement required by OMB memo M-25-13
 - *National Council of Nonprofits v. Office of Management and Budget*, 1:25-cv-00239-LLA (D.D.C.)
 - *New York et al. v. Trump*, 1:25-cv-00039 (D.R.I.)
- Both courts rejected argument that the case was moot given memo was rescinded, finding that the directives of the memo persisted



Cases Challenging DOGE

- Three cases challenging DOGE on grounds that it is operating in violation of the Federal Advisory Committee Act (FACA)
 - *Public Citizen, Inc. v. Trump*
 - *American Public Health Association v. Office of Management and Budget*
 - *Lentini v. Department of Government Efficiency*
- FACA requires advisory committees follow specific authorization process, include balanced membership, have a clear charter including committee's scope, have meetings open to the public and disclose records to the public

DEPARTMENT OF THE INTERIOR ACTIONS



DOI Secretarial Order 3415: Temporary Suspension of Delegated Authority

- Suspends for 60 days authority of DOI bureaus and agencies to engage in rulemaking
- Prohibits notice in the Federal Register, including notices of proposed or final agency action and actions taken in accordance with NEPA
- Prohibits issuing, revising, or amending resources management plans under FLPMA
- Prohibits issuing any authorization “required to allow for renewable energy development”

DOI Order 3418: Unleashing American Energy

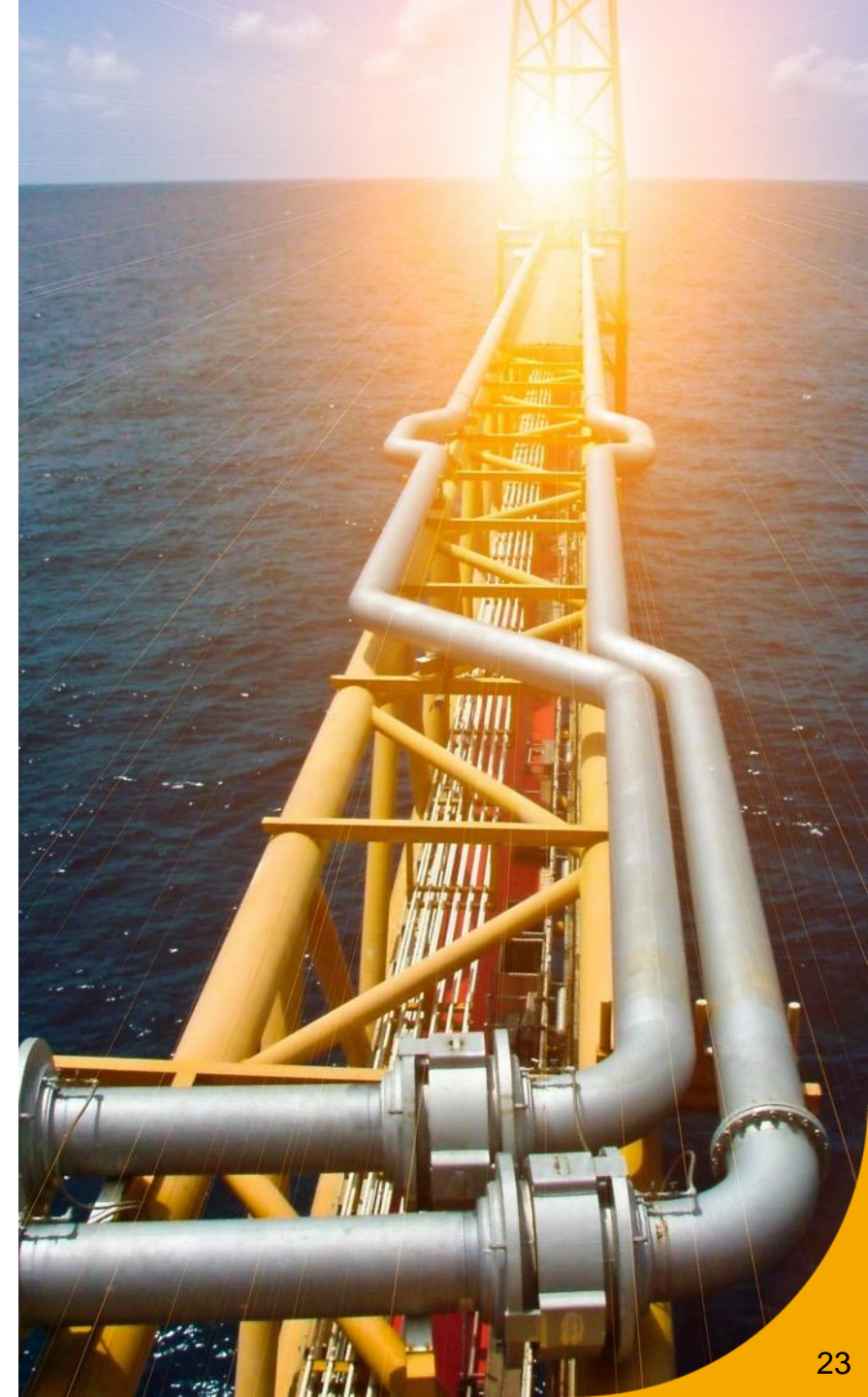
- DOI agencies have 15 days to submit a plan to comply with Unleashing American Energy EO
- Plans must include steps to suspend, revise, or rescind several rules and actions, including:
 - BLM Conservation and Landscape Health
 - BLM Rights-of-way, Leasing and Operations for Renewable Energy
 - ESA Consultation Regulations
 - ESA Listing and Critical Habitat
 - ESA Blanket 4(d) Rule
 - Various 2021 actions regarding MBTA and incidental take
 - Several actions related to oil and gas and minerals on federal lands

DOI Order 3421: Achieving Prosperity Through Deregulation (10:1 Order)

- Commits DOI to President Trump's initiative to eliminate 10 regulations for every new regulation proposed
- Orders all DOI agencies and bureaus to identify 10 DOI regulations to eliminate for each new regulation they implement
- Orders agencies to offset the total incremental cost of any new regulations by eliminating existing costs associated with at least 10 DOI regulations

DOI Order 3420: Announcing President Trump's Revocation of Former Outer Continental Shelf Withdrawals

- Revokes withdrawals of Outer Continental Shelf for oil and gas leasing taken by the Biden administration



DOI Order 3417: Addressing the National Energy Emergency

- Directs all DOI bureaus and agencies to facilitate identification and authorization of domestic energy production, development, generation and transportation projects
- Agencies and bureaus given 15 days to submit a plan on achieving directives of the order



DOI Order 3419: Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis

- Directs DOI bureaus and offices to review programs and regulations and identify those that may result in higher costs, with a focus on “coercive climate policies that increase the cost of food or energy”
- Gives bureaus and offices 15 days to submit a plan to achieve goals of the order



NEPA AND PERMITTING



Actions Undercutting NEPA Regulations

- EO 14154 directs rescission of CEQ NEPA regs
 - Following D.C. Circuit Decision – *Marin Audubon Soc’y v. FAA*, 121 F.4th 902, 910 (D.C. Cir. 2024)
 - Panel majority raised on its own the issue of CEQ authority to adopt regs
 - Petition for Rehearing denied 1/31/2025 – 7 judges joined concurrence seeking to limit NEPA regs ruling as not necessary to disposition of case
 - *Iowa v. CEQ*, case no. 24-cv-89 (D.N.D. Feb. 3, 2025)
 - Vacated 2024 “Phase 2” NEPA Rules on grounds CEQ does not have authority to adopt rules – follows reasoning of *Marin Audubon*
 - Technically, reverts to Trump-era 2020 NEPA rules
 - Effectively undercuts CEQ authority to adopt original 1978 rules and 2020 rules

NEPA Rules and Guidance Remaining in Place

- Some agencies have their own NEPA regulations
 - These typically supplement CEQ regs or adopt them by reference
- Agencies also have handbooks or internal orders that provide direction to agency personnel – again, based on CEQ regs
- Watch for guidance from CEQ –which may reflect 2020 NEPA rules
- 2023 Fiscal Responsibility Act NEPA Amendments
 - Page and time limits
 - Threshold determinations and Levels of Review (Cat Ex, EA and EIS)
 - Contractor and Applicant preparation of Environmental Documents
 - Definitions – including Major Federal Action

Implementing NEPA in the Current Environment

- Consider the requirements of the statute:
- Prepare Detailed Statement for each Major Federal Action significantly affecting the quality of the human environment, including:
 - Reasonably foreseeable environmental affects of the proposed action
 - “No action” alternative and a reasonable range of alternatives, technically and economically feasible and meet the purpose and need of the proposal
- Caselaw Standards – “hard look” and a reasonably thorough discussion of the significant aspects of the probable environmental consequences



U.S. Army Corps of Engineers Pauses Permitting for “Green Energy”

- For a brief period, Corps implemented temporary pause of processing applications for nearly 170 “green energy” projects (this extended beyond wind to solar, hydro, BESS)
- Applied to all new jurisdictional determinations, environmental assessments and public notices
- Also applied to verifications for NWPs beyond NWP 51 where the infrastructure impacting WOTUS was a part of a green energy project (e.g. NWP 14, NWP 57)
- Corps withdrew its pause on JDs and permitting on everything except wind

Corps Permitting – Looking Ahead

- Incidental 404 permitting impacts due to DOI orders
- CWA Emergency Provisions (33 CFR 325.2(e)(4)):
 - Historically narrower interpretation of emergency but “significant economic hardship” included in definition
 - Entails special processing procedures with public notice and reasonable efforts for public comments
- EO directive to expand general permits aligns with NWP reissuance
- WOTUS litigation – government’s motion for stay granted in two cases (*Texas* and *White*); opposed in *West Virginia*
 - Potential rule-making to hew closer to *Sackett*



U.S. Fish & Wildlife Service Permitting

- No permits requiring Federal Register publication can go forward until 60-day temporary suspension is lifted.
 - Many USFWS offices have indicated willingness to continue working on permits and associated NEPA, but cannot publish for Federal Register notice.
- USFWS continues to administer its eagle general permit program for all general permits except for wind.
 - Applications must be submitted through email instead of through registration portal

INDUSTRY IMPACTS: ENERGY AND TRANSMISSION



Industry Impacts: Renewable Energy

- Unclear how/whether the presidential memorandum suspending approvals of wind will be lifted.
 - No timeline on completion of wind assessment or indication of what happens next after assessment
- At the outset, agencies have interpreted this broadly
 - DOI temporary suspension includes approvals for “renewable energy” more broadly.
 - Initial Corps reaction included “green energy” more broadly.

Industry Impacts: Renewable Energy

- USFWS has shown willingness to work on permitting and NEPA, but cannot publish to Federal Register or issue permits.
- USFWS has been unwilling to issue technical assistance letters
- USFWS has suspended eagle general permit program for wind

Industry Impacts: Traditional Energy

- Can anticipate that oil and gas, mineral and other traditional energy projects will be identified as priority projects.
- EOs and agency actions to date have focused on removing obstacles to traditional energy
- Can anticipate that BLM and BOEM will take actions to rescind or revise Biden-era regulations, guidance and policies that have bias against traditional energy
- The degree to which true streamlining will be achieved remains to be seen.

Industry Impacts: Transmission

- National Energy Emergency EO includes “transportation” of energy in its scope
- Several EOs and SOs have recognized need to have reliable domestic energy, including the grid
- Unclear whether National Energy Emergency includes “clean lines” in its scope given definition of “energy” in that EO
- For transmission lines relying on IRA/IIJA funding; unclear how focus on IRA/IIJA funding will be delayed or withheld

INDUSTRY IMPACTS: TRANSPORTATION



Industry Impacts: Transportation

- Funding

- OMB Memorandum M-25-14 rescinded OMB Memorandum M-25-13
- However, EO 14154 (Unleashing American Energy) and OMB Memorandum M-25-11 are still in effect
- The focus is currently on “green new deal” related funding
- For transportation, this primary focus has been on electric vehicle infrastructure funding implemented through the Infrastructure Investment and Jobs Act, particularly the National Electric Vehicle Infrastructure program
- On February 6, the Secretary of Transportation issued a letter to all state Departments of Transportation suspending the NEVI program

Department of Transportation Order: Implementation of Executive Orders Addressing Energy, Climate Change, Diversity and Gender

- Orders Office of the Secretary of Transportation and Operating Administrations to rescind all DOT orders, directives, rules and guidance that reference or relate in any way
 - Climate change
 - Greenhouse gas (GHG) emissions
 - Racial equity
 - Gender identity
 - Diversity, equity, inclusion and accessibility goals
 - Environmental justice
 - Justice 40 initiative



DOT Memorandum: Ensuring Reliance Upon sound Economic Analysis in Department of Transportation Policies, Programs and Activities

- Mandates rigorous economic analysis and positive cost-benefit calculations
- Requires agencies avoid adverse impacts on and maximum benefits for, families and communities
- Requires agencies prioritize projects that:
 - Adhere to Buy America requirements
 - Utilize user-pay models
 - Direct funding to local opportunity zones
 - Mitigate impacts on families and give preference to communities with marriage and birth rates higher than the national average
 - Prohibit fund recipients from imposing vaccine or mask mandates
 - Require local compliance or cooperation with federal immigration enforcement

Industry Impacts: Transportation

- Policy

- Two separate directives issued on January 29 under which Secretary Duffy has primarily directed the U.S. DOT's OAs to take appropriate actions to comply with President Trump's EOs
- As the OST and OAs complete reviews of their respective programs and policies, grant recipients should be on the lookout for direction from their applicable OA in the form of NPRMs, revisions or amendments to current NOFOs and rescission or revision of current, or implementation of new guidance and policy documents
- In addition, OAs may opt to unilaterally amend executed grant agreements to comply with the Administration's policies

A photograph of a dam spillway with water cascading over it. The water is a vibrant blue, and the concrete structure of the dam is visible on the left. The text 'INDUSTRY IMPACTS: WATER' is overlaid in yellow on the left side of the image.

INDUSTRY IMPACTS: WATER

EO 14181: Emergency Measures To Provide Water Resources in California and Improve Disaster Response in Certain Areas

- Requires federal agencies take action “to ensure adequate water resources” (undefined) in Southern California
- Directs federal agencies to expedite exemptions under the ESA (God Squad)
- Targets Federal funding conditions in CA water contracts, grants, and programs
- EO cited as the authority for the recent water releases



Industry Impacts: Water Infrastructure

- Similar permitting concerns plus NMFS considerations
- For CA water storage projects, recent EOs intend to:
 - Fast-track challenged dam and Delta Conveyance construction
 - Override protections for fish, ecosystems, and communities
 - Prioritize reservoir capacity and halt dam removal or modification efforts
 - Roll back regulations that safeguard water resources citing to water security for farms and urban areas
- Funding may increase for recycled water and water transport projects
- Uncertainty is certain... impacts and project priorities not clear yet

Questions?



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