What’s Happening at EPA This Week — and What Does It Mean?

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The Trump administration is barely a week and a half old, and its intention regarding Environmental Protection Agency (EPA) authority and oversight has been a hot topic. Here is an update about what we know — and what we don’t.

1. Regulatory Freeze

On January 26, the EPA issued a rule freezing, for at least 60 days, the implementation of 30 rules that had been issued late in the term of the outgoing Obama administration. The notice pivots off of a January 20 memorandum issued by the White House, instructing agencies to freeze new or pending regulations until the new administration has had a chance to review them. While many of the pending rules relate to authorizing delegated state programs, some are more broadly applicable and would have more immediate effects if further delayed, withdrawn, or struck down.

Each frozen rule is currently scheduled to take effect on March 21, but the administration is leaving room for further delayed implementation. The rules affected include standards governing radon emissions, formaldehyde emissions, air quality, pesticides, biofuels, solid waste landfill permitting, oil and hazardous substances pollution, and aircraft emissions.

Traditionally, this type of a regulatory freeze is standard procedure for an incoming administration. During the previous two transitions, the majority of the regulations that were frozen and reviewed by both the Bush and Obama administrations ended up eventually taking effect. During the campaign, candidate Trump directed much of his rhetoric against the “job-killing” regulations of the EPA. He has since doubled down on his campaign promises by nominating Scott Pruitt to lead the EPA; Pruitt until recently had been taking part in a lawsuit against the EPA and has frequently spoken out about restricting its authority.

Congressional Review Act

Although the Congressional Review Act (CRA) is rarely effective, it could be utilized by the Republican Congress to remove some of the frozen regulations. The CRA has not been successfully used since 2001 due to the limitations of the Act, but with a Republican-controlled Congress and a Republican president, it is now ripe to be used as a powerful tool for the Trump administration to remove some of the Obama-era regulations. Under the CRA, Congress can pass a joint resolution of disapproval by a simple majority. That joint resolution is sent to the president, where it can be signed or vetoed. It is likely that the Trump administration will use the time during which the regulations are frozen to review and target the regulations it views as most susceptible to being overruled using the CRA.

Rules Affected

Renewable Fuel Standard

The Renewable Fuel Standard (RFS) would require oil companies to blend biofuels into the gasoline and diesel they produce. The RFS was created to reduce greenhouse gas emissions and increase the usage of renewable fuels. While the freeze on the RFS has caused some consternation in the agricultural community, the oil industry
has been lobbying against the RFS for years. Oil refiners who do not meet the requirements of the RFS must buy paper credits. After the news of the freeze, the price of paper credits dropped to their lowest price since 2015.

**Formaldehyde Emissions Standards for Composite Wood Products**

The Formaldehyde Emissions Standards for Composite Wood Products, which were added to the Toxic Substances Control Act (TSCA), would set certain standards for formaldehyde emissions for some wood products and would create a set of rules governing testing, certification, and recordkeeping for manufacturers, distributors, and retailers. Once in effect, the rule would become the most restrictive formaldehyde emissions standard in the world and would affect both imported and domestic products.

**Risk Management Program Safety Rule**

Another high profile rule affected by the freeze is the Risk Management Program Facility Safety Rule. The updates to the rule would change accident prevention program requirements and emergency response requirements. The rule would also increase the availability of information to the public, as well as streamline and clarify the current rule.

**Revisions to the Guideline on Air Quality Models**

The freeze also affects the effective date of Appendix W, Revisions to the Guideline on Air Quality Models (82 FR 5182). Appendix W provides revisions to the EPA’s preferred models and techniques in determining concentrations of air pollutants.

**Air Plan Approval; Wisconsin; Infrastructure SIP Requirements for the 2012 PM2.5 NAAQS**

Locally in Wisconsin, the regulatory freeze potentially delays implementation of infrastructure requirements that are designed to ensure that the structural components of the state’s air quality management program are satisfactory under the Clean Air Act.

**Pesticides; Certification of Pesticide Applicators**

Another of the affected rules would modify the standards that protect pesticide applicators. The EPA has stated that this rule would increase the protection for pesticide applicators, improve the standards those applicators are held to by increasing training and supervision, and establish a minimum age for certification. The rule would revise categories of certification and expand the qualifications required to become certified.

2. **Grant Program Freeze**

The EPA had also temporarily frozen its grant programs at the instruction of the Trump administration. The EPA grant program awards more than $4 billion in funding every year for research, education, and environmental monitoring. The EPA resumed issuing grants late Wednesday. The freeze had caused uncertainty for a multitude of cities and states regarding the cleanup of toxic pollution. Doug Erickson, the EPA’s new communications director, stated that the vast majority of contracts and grants had been cleared and that the freeze was only a temporary pause.

3. **Two-for-One on New Regulations**

On Monday, January 30, President Trump signed an executive order requiring federal agencies (including the EPA) to eliminate two existing regulations for each new regulation it promulgated. The order further requires that the cost of any new regulation must be offset by eliminating regulations imposing equivalent costs to businesses, presumably creating an additional layer of oversight for new and existing rules by the Office of Management and Budget (OMB). For now it is unclear how such a requirement would play out in practice. In particular, scrapping old regulations still requires compliance with the Administrative Procedure Act. In addition, many environmental statutes contain mandates to the EPA to promulgate regulations within specified time periods (many of which the EPA has already missed), presenting potential conflicts with such a broad executive order and delays that may result. At a minimum, it would appear that the implementation of this executive order will subject rulemakings to several rounds of litigation at multiple stages and, in all likelihood, slow their progress.

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