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Climate Change Hits EPA: 30 Pending Regulations Frozen

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Summary

In accordance with direction from the Trump administration, the U.S. Environmental Protection Agency (“EPA”) has published a final rulemaking delaying the effective date of 30 pending regulations until at least March 21, 2017. The new regulations, which were scheduled to take effect between January and March, cover a broad range of environmental topics of both state and national applicability, and include regulations issued under the Clean Air Act, the Safe Drinking Water Act, the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), the Resource Conservation and Recovery Act (“RCRA”), the Toxic Substances Control Act (“TSCA”), and the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “Superfund”).¹ The impact of the delay is not yet clear: only a few of the rules were scheduled to become effective in January, with the rest scheduled for an effective date of sometime in February or March. However, based on President Trump’s position that the environmental-regulatory framework is unnecessarily burdensome on the economy,² this freeze could signal a first step in a process that may reduce federal regulatory costs imposed by EPA programs.

Regulatory Background

In a memo dated January 20, 2017, the White House issued a freeze on all pending regulations, including a 60 day stay for all regulations that have been published in the Federal Register but have not yet taken effect.³ Pursuant to this policy, EPA identified the 30 regulations that have been already been published but which are not yet effective and postponed the effective date of those

Impacted Industries

- *Biofuels*
- *Wood Products*
- *Refining & Chemicals*
- *Pest Control*
- *Agriculture*
- *Uranium Recovery*
- *Oil & Gas*
 - Kentucky
- *Solid Waste Disposal*
 - Washington
- *Electric Utilities*
 - Alabama
 - California
 - Michigan
 - New York
 - Tennessee
 - Wisconsin

¹ See Table 1 below.

² Donald J. Trump for President, Inc., *Regulations*, <https://www.donaldjtrump.com/policies/regulations> (last visited Jan. 25, 2017).

³ Memorandum for the Heads of Executive Departments and Agencies; Regulatory Freeze Pending Review, 82 Fed. Reg. 8346 (Jan. 20, 2017).

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regulations until March 21, 2017.⁴ Of the 30 delayed regulations, many are narrow in scope, such as those approving state or regional plans for combatting air pollution under the Clean Air Act. However, at least eight of the postponed regulations would have nationwide application, and—as set forth more fully below—are significant in their breadth.

Notably, such regulatory delay is not uncommon with a new presidential administration, and a similar freeze was put in place following President Obama's inauguration.⁵ For these initial delays, EPA has determined that the Administrative Procedure Act allows the freeze to take effective without public comment, but such comment would be needed if there is an extension of the freeze beyond March 21.⁶

National Rules

Of the 30 delayed rules, eight are national in scope. Of those eight, the rule with the broadest reach is the Renewable Fuel Standard Program 2017 Standards, that mandates the extent to which renewable fuels must be included as part of the nation's energy consumption mix. Additionally, three other rules, the Formaldehyde Emission Standards for composite wood products, the updated Risk Management Program for refineries and chemical plants, and the Certification of Pesticide Applicators, will affect multiple industries and significant sectors of the population. The other four national rules are less significant in that they either impact only specific industries or modify EPA's own criteria and procedures for enforcing various environmental laws.

- EPA's **Renewable Fuel Standard Program 2017 Standards**⁷ sets the renewable fuel percentage standards for 2017, pursuant to Section 211 of the Clean Air Act. These standards regulate the amount of cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel for all motor vehicle gasoline and diesel produced or imported this year. In this rule, EPA also establishes the volume requirement for biomass-based diesel for 2018.
- Through the **Formaldehyde Emission Standards for Composite Wood Products**,⁸ EPA implements the Formaldehyde Emissions Standards for Composite Wood Products Act, which added Title VI to TSCA. These regulations provide formaldehyde emissions standards applicable to hardwood plywood, medium-density fiberboard, and particleboard, and to finished goods containing these products, whether manufactured in the United States or imported. This rule may apply to any entity that manufactures, distributes, or sells composite wood products or anything containing composite wood products (such as furniture, RVs, and manufactured homes).
- The **Accidental Prevention Program Requirements**⁹ amend the Clean Air Act's Risk Management Program. These accident prevention and audit requirements apply mainly

⁴ Delay of Effective Date for 30 Final Regulations Published by the Environmental Protection Agency between October 28, 2016 and January 17, 2017, 82 Fed. Reg. 8499 (Jan. 26, 2107).

⁵ See e.g., Memorandum for the Heads of Executive Departments and Agencies; Regulatory Review, 74 Fed. Reg. 4435 (Jan. 26, 2009).

⁶ 82 Fed. Reg. at 8500–01 (citing the “good cause exceptions” in 5 U.S.C. §§ 553(b)(B), 553(d)(3)).

⁷ Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018, 81 Fed. Reg. 89746 (Dec. 12, 2016) (to be codified at 40 C.F.R. pt. 80).

⁸ Formaldehyde Emission Standards for Composite Wood Products, 81 Fed. Reg. 89674 (Dec. 12, 2016) (to be codified at 40 C.F.R. pt. 770).

⁹ Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, 82 Fed. Reg. 4594 (Jan. 12, 2017) (to be codified at 40 C.F.R. pt. 68).

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to chemicals manufacturing and petroleum-related industries, but may also affect broader manufacturing and distribution sectors as well.

- The ***Certification of Pesticide Applicators***¹⁰ updates the existing regulation concerning the certification of applicators of restricted use pesticides under FIFRA. The rule modifies the certification requirements for applicators of restricted pesticides, such as those used in the pest control industry and agricultural sectors, and provides updated age and supervision requirements.
- EPA's ***Revisions to National Emission Standards for Radon Emissions***¹¹ revise the standards for radon emissions from uranium recovery facilities, regulated under the Clean Air Act. These regulations apply to the roughly 13 uranium recovery mills either currently operated or on stand-by in the United States, as well as any facilities that have not yet begun operation.
- The ***Addition of a Subsurface Intrusion Component to the Hazard Ranking System***¹² rule adds a subsurface intrusion component to the Hazard Ranking System, the main way EPA evaluates sites for placement on the National Priorities List ("NPL") as part of CERCLA. This rule provides EPA additional options when responding to releases of hazardous substances and expands the properties that may be eligible for inclusion on the NPL and thus subject to Superfund regulation.
- EPA's ***Revisions to the Guideline on Air Quality Models***¹³ modifies the models that are used in the Clean Air Act's Prevention of Significant Deterioration program. This rule institutes a one-year transition period during which some models will be phased out while newer models are adopted. This action applies to federal, state, territorial, local, and tribal air quality management agencies that conduct air quality modeling under the Clean Air Act.
- The ***Consolidated Rule of Practice***¹⁴ revises EPA rules for the administrative assessment of civil penalties and various other administrative adjudicatory hearings. These changes remove inconsistencies and typographical errors that were previously present and are procedural in nature.

State-Specific Rules

- The remainder of the postponed rules are narrower in scope. These 22 rules only apply to 16 specific states or regions within those states, with a vast majority concerning the implementation of air quality programs under the Clean Air Act.¹⁵ Additionally at issue are

¹⁰ Pesticides; Certification of Pesticide Applicators, 82 Fed. Reg. 952 (Jan. 4, 2017) (to be codified at 40 C.F.R. pt. 171).

¹¹ Revisions to National Emission Standards for Radon Emissions From Operating Mill Tailings, 82 Fed. Reg. 5142 (Jan 17, 2017) (to be codified at 40 C.F.R. pt. 61).

¹² Addition of a Subsurface Intrusion Component to the Hazard Ranking System, 82 Fed. Reg. 2760 (Jan. 9, 2017) (to be codified at 40 C.F.R. pt. 300).

¹³ Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter, 82 Fed. Reg. 5182 (Jan. 17, 2017) (to be codified at 40 C.F.R. pt. 51).

¹⁴ Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/ Termination or Suspension of Permits; Procedures for Decisionmaking, 82 Fed. Reg. 2230 (Jan. 9, 2017) (to be codified at 40 C.F.R. pts. 124, 22).

¹⁵ The states with Clean Air Act related rules include Alabama, Arizona, California, Georgia, Illinois, Idaho, Kentucky, Louisiana, Michigan, New York, Pennsylvania, Rhode Island, Tennessee, Texas, Wisconsin.

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two permits for underground injection control well programs in Kentucky,¹⁶ the partial de-listing of a Superfund site in Pennsylvania,¹⁷ and the approval of the state of Washington’s municipal solid waste landfill permit program.¹⁸

Table 1: EPA 30 Proposed Rules Currently Postponed

Title	Federal Register Citation	Related Statute	Publication Date	Original Effective Date
State of Kentucky Section 1425 Underground Injection Control (UIC) Program Primacy Approval	81 FR 74927	Safe Drinking Water Act	10/28/16	1/26/2017
Approval and Promulgation of Implementation Plans; New York Prevention of Significant Deterioration of Air Quality and Nonattainment New Source Review; Infrastructure State Implementation Plan Requirements	81 FR 95047	Clean Air Act	12/27/16	1/26/2017
Air Plan Approval; KY; RACM Determination for the KY Portion of the Louisville Area 1997 Annual PM2.5	81 FR 95041	Clean Air Act	12/27/16	1/26/2017
Air Plan Approval; Wisconsin; Infrastructure SIP Requirements for the 2012 PM2.5 NAAQS	81 FR 95043	Clean Air Act	12/27/16	1/26/2017
Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Louisiana; Redesignation of Baton Rouge 2008 8-Hour Ozone Nonattainment Area to Attainment	81 FR 95051	Clean Air Act	12/27/16	1/26/2017
State of Kentucky Underground Injection Control (UIC) Class II	81 FR	Safe Drinking	12/28/16	1/27/2017

¹⁶ State of Kentucky Underground Injection Control (UIC) Class II Program; Primacy Approval, 81 Fed Reg. 74927 (Oct. 20, 2016) (to be codified at 40 C.F.R. pt. 147); State of Kentucky Underground Injection Control (UIC) Class II Program; Primacy Approval, 81 Fed. Reg. 95480 (Dec. 28, 2016) (to be codified at 40 C.F.R. pt. 147).

¹⁷ National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the North Penn Area 6 Superfund Site, 81 Fed. Reg. 94262 (Dec. 23, 2016) (to be codified at 40 C.F.R. 300).

¹⁸ Determination of Full Program Adequacy of Washington’s Municipal Solid Waste Landfill Permitting Program, 81 Fed. Reg. 85438 (Nov. 28, 2016) (to be codified at 40 C.F.R. pts. 239, 258).

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Program; Primacy Approval	95480	Water Act		
Air Plan Approval; Illinois; Volatile Organic Compounds Definition	81 FR 95475	Clean Air Act	12/28/16	1/27/2017
Approval of California Air Plan Revisions, Great Basin Unified Air Pollution Control District	81 FR 95473	Clean Air Act	12/28/16	1/27/2017
Approval of California Air Plan Revisions, South Coast Air Quality Management District	81 FR 95472	Clean Air Act	12/28/16	1/27/2017
Partial Approval and Partial Disapproval of Attainment Plan for the Idaho Portion of the Logan, Utah/Idaho PM2.5 Nonattainment Area	82 FR 729	Clean Air Act	1/4/17	2/3/2017
Addition of a Subsurface Intrusion Component to the Hazard Ranking System	82 FR 2760	CERCLA	1/9/17	2/8/2017
Approval and Promulgation of Implementation Plans; Rhode Island; Clean Air Act Infrastructure State and Federal Implementation Plans	82 FR 2237	Clean Air Act	1/9/17	2/8/2017
Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018	81 FR 89746	Clean Air Act	12/12/16	2/10/2017
Formaldehyde Emission Standards for Composite Wood Products	81 FR 89674	TSCA	12/12/16	2/10/2017
Approval and Promulgation of Implementation Plans; Texas; Control of Air Pollution from Visible Emissions and Particulate Matter	82 FR 3171	Clean Air Act	1/11/17	2/10/2017
Determination of Attainment of the 2012 Annual Fine Particulate Matter Standard; Pennsylvania; Delaware County Nonattainment Area	81 FR 89868	Clean Air Act	12/13/16	2/13/2017
Air Plan Approval; TN Infrastructure Requirements for	82 FR 3639	Clean Air Act	1/12/17	2/13/2017

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the 2010 NO2 NAAQS				
Approval and Promulgation of Implementation Plans; Alabama; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard	82 FR 3637	Clean Air Act	1/12/17	2/13/2017
Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches to Address Ozone and Fine Particulate Matter	82 FR 5182	Clean Air Act	1/17/17	2/16/2017
Air Plan Approval; Michigan; Part 9 Miscellaneous Rules	81 FR 91839	Clean Air Act	12/19/16	2/17/2017
National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the North Penn Area 6 Superfund Site	81 FR 94262	CERCLA	12/23/16	2/21/2017
Determination of Attainment of the 2008 Ozone National Ambient Air Quality Standards; Mariposa County, California	81 FR 93624	Clean Air Act	12/21/16	2/21/2017
Adequacy of Washington Municipal Solid Waste Landfill Permit Program - Direct Final Rule	81 FR 85438	RCRA	11/28/16	2/27/2017
Approval and Promulgation of Implementation Plans; Louisiana; State Boards	81 FR 95477	Clean Air Act	12/28/16	2/27/2017
Pesticides; Certification of Pesticide Applicators	82 FR 952	FIFRA	1/4/17	3/6/2017
Air Plan Approval; Georgia: Procedures for Testing and Monitoring Sources of Air Pollutants	82 FR 1206	Clean Air Act	1/5/17	3/6/2017
Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or	82 FR 2230	Administrative Procedures Act, Clean Air Act, Clean Water	1/9/17	3/10/2017

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Corrective Action Orders, and the Revocation/Termination or Suspension of Permits; Procedures for Decisionmaking		Act, Safe Drinking Water Act, RCRA		
Approval of Arizona Air Plan Revisions; Ajo and Morenci, Arizona; Second 10-Year Sulfur Dioxide Maintenance Plans and Technical Correction	82 FR 2239	Clean Air Act	1/9/17	3/10/2017
Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act	82 FR 4594	Clean Air Act	1/13/17	3/14/2017
Revisions to National Emission Standards for Radon Emissions from Operating Mill Tailings	82 FR 5142	Clean Air Act	1/17/17	3/20/2017

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