

## CLIENT ALERT

### Implementing the Energy Independence Executive Order

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#### *Identifying Rules and Regulations That Burden Domestic Energy Production*

As Crowell & Moring [described in its recent client alert](#), President Trump issued his Presidential Executive Order on Promoting Energy Independence and Economic Growth on March 28, 2017. The Executive Order directed EPA to revise or rescind the Clean Power Plan, lifted the coal lease moratorium on federal lands, and severely limited the consideration of the effects of greenhouse gas emissions on climate change as a factor in evaluating the cost of agency action. Perhaps just as significantly, the Executive Order instructed the head of every executive agency to identify and suspend, revise, or rescind any regulation “that potentially burden[s] the development or use of domestically produced energy resources.” The directive presents one of the first and best opportunities for industry and other interested parties to work collaboratively with the administration to explain their priorities and to identify both helpful and unduly burdensome regulations.

The Executive Order requires agencies to identify and review regulations in short order. By May 12, agencies must submit their plans for reviewing regulations affecting domestic energy production to the Vice President, Director of the Office of Management and Budget, and other senior administration officials. Seventy-five days later, by July 26, each agency must present a draft report with specific recommendations of how to ease the regulatory burden on domestic energy production. Last, agencies must finalize their draft reports 60 days later, by September 24.

The Executive Order applies to all executive agencies, and, although most regulations impacting domestic energy production are within the purview of the Department of Energy, the Department of the Interior, and the Environmental Protection Agency, interested parties should consider other agencies whose actions or regulations may affect energy production. For instance, the Department of Labor, through the Mine Safety and Health Administration, regulates working conditions in coal mines and the Department of Agriculture, through the U.S. Forest Service, administers use of lands within the National Forest System, both of which may impinge on fossil fuel and renewable energy projects.

Once an agency has identified a regulation as burdening energy production, the Executive Order directs the head of the relevant agency to revise, suspend or withdraw the rule as soon as practicable. In doing so, the agency still must follow the requirements of the Administrative Procedure Act. Some agency actions, such as guidance documents, can be revised or rescinded with relative ease. But if an agency action was promulgated pursuant to notice and comment rulemaking, then the agency can only amend or withdraw the regulation through the same process, which requires it to provide the factual and policy bases for its decisions. Ultimately, it can be predicted with certainty that some of the agency actions intended to ameliorate the burden on domestic energy production will be challenged in court as proponents of the revised or withdrawn regulations argue that the agency erred in the decision making process.

The Executive Order directs agencies to coordinate these regulatory reforms with their activities undertaken to comply with Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs), which requires agencies to

withdraw two regulations for every newly promulgated regulation. A third Executive Order, Executive Order 13777, issued February 24, 2017 (Enforcing the Regulatory Reform Agenda), also requires agencies to undertake regulatory reform efforts through the creation of agency task forces. On April 13, 2017, EPA issued a notice soliciting comments on regulations that may be appropriate for repeal, replacement, or modification under Executive Order 13777 (82 Fed. Reg. 17793).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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