

Tracking Environmental Midnight Rules as the Clock Ticks down on the Trump Administration

Alert

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Last updated January 20, 2021

With a new year approaching, so does the imminence of a new presidential administration. The Biden team and transition team have laid out environmental policies since early in the campaign. It is clear the new administration will bring many changes to the regulated community. But, where the Trump administration ends up is equally important. Midnight rules—rules created during the lame duck period of an administration and pushed through before inauguration—have long been a trend of outgoing administrations.

Incoming administrations often issue a regulatory freeze shortly after inauguration to “pause” new regulations that did not go into effect, and the incoming Biden administration has already indicated it will do so. We are tracking the status of environmental regulations that have been published since the election and those anticipated before the inauguration. We will update this tracker through the end of the Trump administration.

Updated: January 20, 2021

ALREADY PUBLISHED IN THE FEDERAL REGISTER

Regulatory Item

Rule Stage

Tracking Environmental Midnight Rules as the Clock Ticks down on the Trump Administration

Signed

Date in Federal Register

Effective Date or Comment deadline

Brief Summary

National Emission Standards for Hazardous Air Pollutants: Phosphoric Acid Manufacturing

[Final Rule](#)

November 3, 2020

Effective November 3, 2020

Revised mercury MACT floor

Once In, Always In

[Final Rule](#)

November 19, 2020

Effective January 19, 2021

Allows major sources to be reclassified at any time as area sources if they reduce potential emit below 10 tons per year of any specific pollutant and below 25 tons per year of any combination of pollutants

Forest Service NEPA Compliance

[Final Rule](#)

November 19, 2020

Effective November 19, 2020

Adds new categorical exclusions and combines several pre-existing categories; adds a Determination of NEPA Adequacy so that prior analysis can cover similar subsequent actions

Risk Assessment of EtO

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Draft Risk Assessment

November 20, 2020

Comments due January 19, 2021

EPA's human health and/or ecological risk assessment is available for ethylene oxide

PFAS Interim Strategy NPDES

Interim Strategy

November 22, 2020

Recommends permit writers include PFAS phased-in monitoring and control requirements into permits (including MS4 and storm water) and continue to build information sharing capabilities for permit writers

Procedures for Considering Environmental Impacts

Notice of Proposed Rulemaking

November 23, 2020

Comments due December 23, 2020

Codifying [DOT Order 5610.1C](#), which outline department policy for complying with NEPA

PSD and NNSR: Project Emissions Accounting

Final Rule

November 24, 2020

Effective December 24, 2020

To determine if project is a major modification: (1) will there be a significant increase or a *decrease* in emissions? (2) if yes, determine if there is a net increase in emissions

CERCLA Financial Responsibility for EGUs

Final Rule

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December 2, 2020

Effective January 4, 2021

Exclude electric power generation, transmission, and distribution; petroleum and coal products manufacturing; and chemical manufacturing industries from financial responsibility record keeping requirements under § 108(b)

NEPA Implementing Procedures DOE

Final Rule

December 4, 2020

Effective January 4, 2021

Exclude harms agency cannot control, such as operation of natural gas facilities, from NEPA analysis for natural gas exportation

Maui implementation guidance

Guidance

December 10, 2020

Comments due January 9, 2021

"Functional equivalent" determined by analysis of factors in *Maui* plus system design and performance

Test Procedure Interim Waiver Process

Final Rule

December 11, 2020

Effective January 11, 2021

DOE must notify applicant for interim waiver within 45 business days of receipt of application

CWA 402/404 criminal intent standard

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Proposed rule

December 14, 2020

Comments due January 13, 2021

State and tribal NPDES programs may use any negligence standard, including recklessness or gross negligence, for criminal liability

PFAS Significant New Use Rule

Guidance

December 16, 2020

Comments due January 15, 2021

Need SNUF if importing article coated with PFAS

Oil and Gas and Sulfur Operations on the Outer Continental Shelf-Revisions to the Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf

Proposed Rule

December 9, 2020

Comments due February 8, 2021

Revises regulations for exploratory drilling related to factors evaluated for SOO, pollution prevention, Control and Containment Equipment, relief rig capabilities, timing/requirements for IOP, contents of IOP, data/info for EP and DPP

Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances

Guidance

December 22, 2020

Comments due February 16, 2020

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To satisfy the National Defense Authorization Act for Fiscal Year 2020, Public Law No: 116-92, this document provides options to manage PFAS waste that may destroy or control its migration into the environment. It identifies a number of data gaps that, if filled, could allow for additional and specific recommendations in the future.

CCR Beneficial Reuse

NODA

December 22, 2020

Comments due February 22, 2021

Proposed: (1) replace static numerical threshold with site-specific threshold or use combination of mass and site specific; (2) use single approach regardless of pile location

Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process

Final Rule

December 23, 2020

December 23, 2020

EPA must: (1) prepare and consider benefit-cost analysis for "significant" regulations under CAA; (2) use best practices for BCA consistent with EPA's Guidelines for Preparing Economic Analyses and the Office of Management and Budget's Circular A-4; (3) include summary of BCA results, benefits considered, costs considered and how agency considered BCA in all proposed and final regulations; (4) exclude consideration ancillary benefits

Ozone NAAQS

Final Rule

December 31, 2020

Retaining primary and secondary ozone standards

Updated: Strengthening Transparency in Regulatory Science

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Updated: [Final Rule](#) *Updated:* January 6, 2021

Public access to data, models and studies supporting pivotal science and pivotal regulatory changes, sufficient to support independent verification

Updated: Final Risk Evaluation for 1,4-Dioxane

[Final Evaluation](#) December 31, 2020

Evaluating risks of 1,4-dioxane to 24 conditions of use and determining that the chemical poses an unreasonable risk in 13 of those categories but no unreasonable risk to the general population.

Airline Manufacturer GHG Rule

Updated:

[Final Rule](#) January 11, 2021

January 11, 2021

Updated: Notice of Availability – Preliminary Effluent Guidelines Plan 14

[Final Rule](#)

January 11, 2021

Provides update to Preliminary Plan 14 and comments received during public comment period. The Plan 14 presents early results from new analyses and provides updates on EPA's reviews of industrial wastewater discharges and treatment technologies, including analyses of industrial sources and discharges of nutrients, proposed treatment technology reviews, and the effluent limitations guidelines database. This includes updates related to the petroleum refining category, PFAS multi-industry, and updates related to steam EGUs and an upcoming request for information to PFAS manufacturers.

Updated: Pollutant-Specific Significant Contribution Finding for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, and Process for Determining Significance of Other New Source Performance Standards Source Categories

Final Rule

January 13, 2021

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March 15, 2021

Finalizing a significant contribution finding for purposes of regulating source categories for greenhouse gas emissions, under section 111(b) of the Clean Air Act for electric generating units, and reaffirming that EGUs remain a listed source category.

Updated: Standards of Performance for Volatile Organic Liquid Storage Vessels (including petroleum liquid storage) for which construction, reconstruction or modification commenced after July 23, 1984

Final Rule

January 19, 2021

January 19, 2021

Finalizing amendments to allow certain owners and operators of regulated tanks equipped with either an external floating roof or internal floating roof to voluntarily elect to comply with alternative requirements.

Updated: Applying the Supreme Court's County of Maui v. Hawaii Wildlife Fund Decision in the Clean Water Act Section 402 National Pollutant Discharge Elimination System Permit Program

January 21, 2021

AWAITING PUBLICATION IN THE FEDERAL REGISTER

Regulatory Item

Rule Stage

Signed

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CCR Beneficial Reuse

NODA

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December 22, 2020

Comments due 60 days after publication in FR

PM NAAQS

[Final Rule](#)

December 14, 2020

Effective Day Published in FR

National Primary Drinking Water Regulations: Lead and Copper Rule Revisions

[Final Rule](#)

December 21, 2020

60 days after publication in the Federal Register

AWAITING ADMINISTRATOR SIGNATURE

Regulatory Item

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Brief Summary

Regulations Governing Take of Migratory Birds

[Proposed Rule](#)

Awaiting Final Rule

February 3, 2020

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Comments closed March 19, 2020

Restrict definition of taking to include only actions directed at birds, their nests or their eggs

Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat

[Proposed Rule](#)

Awaiting Final Rule

August 5, 2020

Comments closed September 4, 2020

Proposing adding a definition of habitat to regulations

Regulations for Designating Critical Habitat

[Proposed Rule](#)

Awaiting Final Rule

September 8, 2020

Comments closed October 8, 2020

Codifies process for excluding areas from critical habitat

CONTACT

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