TRUMP ISSUES SWEEPING EXECUTIVE ORDER DECLARING NATIONAL ENERGY EMERGENCY

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US Policy and Regulatory Alert

By: David J. Raphael, Samuel R. Boden, Matthew H. Leggett, Laurie B. Purpuro, John W. Northington Jr., Cliff L. Rothenstein, Tim L. Peckinpaugh, Varu Chilakamarri

On 20 January 2025, President Trump issued an Executive Order declaring a National Energy Emergency (Order).[1] Under the National Emergencies Act,[2] the president may declare a national emergency that allows the government to use statutory authorities that are reserved for times of national emergencies. In other words, a national emergency declaration does not suspend or change the law except as permitted by applicable statutory emergency authorities. The relevant statutory emergency authorities are discussed below.

In summary, the Order directs agencies to utilize their statutory emergency powers to speed up development and authorization of energy projects. Notably, however, the Order defines "energy" as: "crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals." As such, the Order does not apply to solar, wind, batteries, or other energy sources not contained in the definition of "energy."

The Order contains six substantive provisions:

Emergency Approvals

The Order directs the heads of executive departments and agencies to identify authorities to facilitate domestic energy production on Federal and other lands, including Federal eminent domain authorities and authorities under the Defense Production Act.[3] This provision also directs the Environmental Protection Agency (EPA) to consider issuing emergency fuel waivers to allow the year-round sale of E15 gasoline.[4]

Expediting the Delivery of Energy Infrastructure

The Order directs agencies to use all relevant lawful emergency and other authorities to: (a) expedite the completion of authorized and appropriate energy projects; (b) facilitate energy production and transportation through the West Coast, Northeast, and Alaska; and (c) report on these activities to the Assistant to the President for Economic Policy.

Emergency Regulations and Nationwide Permits Under the Clean Water Act and Other Statutes Administered by the Army Corps of Engineers

The Order directs the heads of all agencies to identify planned or potential actions to facilitate energy production that may be subject to the Army Corps emergency permitting provisions and use these authorities to facilitate the nation's energy supply.[5] The Order also requires agencies to report on evaluations under this provision and

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directs the Army Corps and EPA to promptly coordinate with agencies regarding application of Army Corps permitting provisions.

Endangered Species Act (ESA) Emergency Consultation Regulations

The Order directs the heads of all agencies to identify planned or potential actions to facilitate energy production that may be subject to ESA emergency permitting provisions and use these authorities to facilitate the nation's energy supply.[6] The Order also requires agencies to report on evaluations under this provision and directs the US Fish and Wildlife Service and National Marine Fisheries Service to promptly coordinate with agencies regarding application of ESA emergency permitting provisions.

Convening the ESA Committee

The Order directs the ESA Committee to meet quarterly to review applications for exemption from requirements of the ESA (or to identify obstacles to domestic energy infrastructure, if the ESA Committee has no pending applications for review). This provision requires the Secretary of the Interior to determine an applicant's eligibility for an ESA exemption within 20 days of receipt and the ESA Committee to grant or deny the application within 140 days of the Secretary's eligibility determination.

Coordinated Infrastructure Assistance

The Order directs the Secretary of Defense, in collaboration with the Secretaries of Interior and Energy, to conduct an assessment of the Department of Defense's ability to acquire and transport the energy, electricity, or fuels needed to protect the homeland and conduct operations abroad, with a focus on the Northeast and West Coast. This provision notes that the Secretary of the Army may address any of these vulnerabilities under the Army's authority to undertake military construction projects in the event of a national emergency.[7]

While the Order clearly expresses the Trump Administration's policy to encourage development of domestic conventional energy production, the affected agencies must still act within prescribed statutory limits. As such, it will take time to see how future legal challenges will shape the Order's ultimate impact on the permitting and siting of future conventional energy projects throughout the United States.

Our multidisciplinary teams are advising a wide range of clients across the energy industry on the critical changes announced and soon-to-be-implemented by the new Trump Administration, including policy priorities, impacts to permitting and regulatory processes, environmental reviews, and the impacts of recent Supreme Court decisions like *Loper Bright* on future agency actions.

FOOTNOTES

[1] https://www.whitehouse.gov/presidential-actions/2025/01/declaring-a-national-energy-emergency/

[2] *See* 50 U.S.C. 1601 et seq.

[3] *See* 50 U.S.C. 4501 et seq.

[4] As authorized under 42 U.S.C. 7545(c)(4)(C)(ii)(III).

[5] As authorized under 33 U.S.C. 1344; 33 U.S.C. 403; 33 U.S.C. 1413.

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[6] As authorized under 50 C.F.R. 402.05; 16 U.S.C. 1531 *et seq*.

[7] As authorized under 10 U.S.C. § 2808.

KEY CONTACTS



DAVID J. RAPHAEL
PARTNER

HARRISBURG, PITTSBURGH
+1.717.231.4574
DAVE.RAPHAEL@KLGATES.COM



SAMUEL R. BODEN
ASSOCIATE

HARRISBURG
+1.717.231.4502
SAM.BODEN@KLGATES.COM



MATTHEW H. LEGGETT
PARTNER

WASHINGTON, DC
+1.202.778.9087
MATT.LEGGETT@KLGATES.COM



LAURIE B. PURPURO
GOVERNMENT AFFAIRS COUNSELOR

WASHINGTON, DC
+1.202.778.9206
LAURIE.PURPURO@KLGATES.COM



JOHN W. NORTHINGTON JR.
GOVERNMENT AFFAIRS ADVISOR

HOUSTON, WASHINGTON, DC
+1.713.815.7318
JOHN.NORTHINGTONJR@KLGATES.COM



CLIFF L. ROTHENSTEIN
GOVERNMENT AFFAIRS ADVISOR

WASHINGTON, DC
+1.202.778.9381
CLIFF.ROTHENSTEIN@KLGATES.COM



TIM L. PECKINPAUGH
PARTNER

WASHINGTON, DC
+1.202.661.6265
TIM.PECKINPAUGH@KLGATES.COM



VARU CHILAKAMARRI
PARTNER

WASHINGTON, DC
+1.202.778.9165
VARU.CHILAKAMARRI@KLGATES.COM

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